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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~315~~ 52

WILLIAM ROEMER, APPELLANT,

vs.

DAVID NEUMANN AND GUSTAV BERNHEIM.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 13, 1886.

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1 The President of the United States of America to David Neu-
[L. S.] mann, Gustav Bernheim, and Carl Neumann, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of December, A. D. 1883, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by William Roemer and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 13th day of November, in the year one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and eighth.

TIMOTHY GRIFFITH, *Clerk.*

WILLIAM ROEMER,
Compl't, in Person.

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of December, 1883, or the bill will be taken *pro confesso* against them.

T. G., *Clerk.*

2 [Endorsed:] U. S. marshal's office, New York, Nov. 30, 1883. I hereby depute William Roemer to serve the within sub. in equity. Joel B. Erhardt, U. S. marshal. Filed Dec. 28, 1883.

3 The President of the United States of America to David
[L. S.] Neuman, Gustav Bernheim, and Carl Neuman, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of February, A. D. 1884, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by William Roemer and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 28th day of December, in the year one thousand eight hundred and

eighty-three, and of the Independence of the United States of America the one hundred and eight.

TIMOTHY GRIFFITH, *Clerk.*

WILLIAM ROEMER,
Compl't, in Person.

4 The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of February, 1884, or the bill will be taken *pro confesso* against them.

T. G., *Clerk.*

[Endorsed:] U. S. circuit court. Filed Jan. 24, 1884. Timothy Griffith, clerk. I hereby certify that on the 4th day of January, 1883, at the city of New York, in my district, I personally served the within subpœna upon the within-named David Neuman by exhibiting to him the within original and at the same time leaving with him a copy thereof. Carl Neuman, Gustav Bernheim not found. Dated Jan. 22nd, 1884. Joel B. Erhardt, U. S. marshal, S. D. N. Y. U. S. marshal's office, S. D. N. Y. Dec. 28, 1883, rec'd.

5 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN, GUSTAV BERNHEIM, and CARL NEUMANN. } In Equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

William Roemer, doing business at the city of Newark, in the county of Essex and State of New Jersey, and a citizen of the United States, brings this his bill of complaint against David Neumann, Gustav Bernheim, and Carl Neumann, doing business in the city of New York, in the county and State of New York, and also in the city of Newark, in the county of Essex and State of New Jersey, under the firm name and style of R. Neumann & Co., and who are, as your orator is informed and believes, citizens of the United States; and thereupon your orator complains and says—

That your orator was and is the original and first inventor
6 of an improvement in locks for traveling bags, fully described in letters patent hereinafter mentioned, and which had not been known or used before your orator's said invention and which was not for more than two years before your orator's application for a patent, as hereinafter mentioned, in public use or on sale with his consent or allowance.

And your orator, on information and belief, further shows unto your honors that your orator, being so as aforesaid the first inventor and discoverer of said improvement in locks for traveling bags, at

the time of making application for a patent for the same assigned all his right, title, and interest to the firm of Roemer Brothers, of the city of Newark, to whom was granted, on the first day of October, 1878, upon due application therefor, letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States of America, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 208,541, whereby there was granted and secured to said firm of Roemer Brothers, their heirs, administrators, or assigns, or intended so to be, for the term of seventeen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention and improvement as set forth in said letters patent, which, or a duly certified copy of which, is ready here in court to be produced, and by virtue whereof said Roemer Brothers became the sole owners of all the rights and privileges granted and secured in and by said letters patent.

And your orator further shows unto your honors that on the twenty-first day of February, 1880, said firm of Roemer Brothers assigned all their rights, title, and interest in said letters patent to William Roemer, the inventor of said improvement in locks for traveling bags, who is now the complainant in this suit, said assignment being duly recorded in the United States Patent Office on the second day of March, 1880.

And your orator further shows unto your honors that by virtue of the premises your orator became and now is
7 the sole and exclusive owner of said letters patent and the inventions and improvement described therein and of all the rights and privileges granted and secured or intended to be granted and secured thereby, and that since he became the owner as aforesaid he has invested and expended large sums of money and has been to great trouble in and about said invention and for the purpose of carrying on business of manufacturing and selling said locks for traveling bags and making the same profitable to himself and useful to the public; and that said invention is of and has been of great benefit and advantage, and that large quantities of locks were made according to said invention and sold by your orator to the great advantage of the public; and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orator, and your orator believes that he will realize and receive large gains and profits therefrom if infringements by said defendants and their confederates shall be prevented; yet the said defendants, well knowing the premises and the rights secured to your orator as aforesaid, but contriving to injure your orator and to deprive him of the benefits and advantages which might and otherwise would accrue unto your orator from said invention, after the 21st day of February, 1880, and before the commencement of this suit did, as your orator is informed and believes, without the license or allowance and against the will of your orator and in violation of your orator's rights and in infringement of the aforesaid letters pat-

ent, at the city of New York and elsewhere, unlawfully and wrongfully and in defiance of the rights of your orator, make, construct, use, and vend to others to be used locks for traveling bags made according to and employing and containing said invention, and that said defendants and their confederates still continue so to do, and that they are threatening to make the aforesaid locks in large quantities and to supply the market therewith and to sell the same, all in defiance of the rights acquired by and secured to your orator as aforesaid and to your orator's great and irreparable loss and injury, and by which your orator has been and is still being deprived of great gains and profits which your orator might and would
8 have obtained, but which have been received and enjoyed and are being received and enjoyed by the said defendants by and through their aforesaid unlawful acts and doings.

And your orator further shows unto your honors, on information and belief, that said defendants have made and sold and caused to be made and sold large quantities of said locks, and have a large quantity on hand which they are offering for sale, and have made and realized large profits and advantages therefrom, but to what extent and how much exactly your orator does not know and prays a discovery thereof.

And your orator says that the use of said invention by said defendants and their preparation for and avowed determination to continue the same and their aforesaid unlawful acts in disregard and defiance of the rights of your orator have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orator's rights.

And your orator further shows unto your honors that he has caused notice to be given to said defendants of said infringements and of the right of your orator in the premises and requested said defendants to desist and refrain therefrom; that said defendants disregarded said notice and refused to desist from said infringements, and still continue to make and sell said locks without right.

And your orator prays that said defendants, David Neumann, Gustav Bernheim, and Carl Neumann, and their firm of R. Neumann & Co., and their servants, agents, attorneys, and workmen and each and every one of them may be restrained and enjoined provisionally and perpetually, by the order and injunction of this honorable court, from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use, or in anywise counterfeiting or imitating the said invention or any part thereof or any locks made in accordance therewith or like or similar to those which said defendants have heretofore made; and that the said defendants may be decreed to pay the profits unlawfully obtained by them by reason of the aforesaid infringement and the damages thereby suffered by your orator and the cost of this suit; and that your orator may have such
9 further relief or such other relief as to this honorable court shall seem meet and as shall be agreeable to equity.

And forasmuch as your orator can have no adequate relief, except in this court, to the end, therefore, that said defendants may, if

they can, show why your orator should not have the relief hereby prayed, and may upon their several corporate oaths, according to their and each of their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters hereinbefore mentioned and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orator the profits by them acquired and the damages suffered by your orator from the aforesaid unlawful acts—

May it please your honors to grant unto your orator the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendants, David Neumann, Gustav Bernheim, and Carl Neumann, and their said firm of R. Neumann & Co. and their and each of their agents, attorneys, and workmen and each and every one of them as is hereinbefore in that behalf prayed.

May it please your honors to grant unto your orator the writ of subpœna, issuing out of and under the seal of this honorable court, directed to the said defendants, David Neumann, Gustav Bernheim, and Carl Neumann, and their said firm of R. Neumann & Co., commanding them, by a certain day and under certain penalty, to be and appear in this honorable court, then and there to answer the premises and to stand to and abide such order and decree as may be made against them.

And your orator will ever pray, &c.

WILLIAM ROEMER.

10 UNITED STATES OF AMERICA,
Southern District of New York:

On this the 12th day of November, 1883, before me personally appeared William Roemer, the above-named complainant, who, being by me first duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true, and that he verily believes himself to have been the first, original, and sole inventor of the improvement in locks for traveling bags referred to in said bill of complaints.

WILLIAM ROEMER, *Complainant.*

Subscribed and sworn to before me this 12th day of November, 1883.

[SEAL.] J. F. KUHN,
Notary Public, N. J.

WILLIAM ROEMER,
Complainant, in Person.

Sworn to before me this 12th day of January, 1884.

TIMOTHY GRIFFITH,
U. S. Commissioner.

The clerk is authorized to swear W. Roemer to his bill of complaint in Roemer & Neumann *& al.*

New York, Jan'y 12, 1883.

W. J. WALLACE.

11 UNITED STATES OF AMERICA,
Southern District of New York:

Henry Roemer, of lawful age and a citizen of Newark, county of Essex and State of New Jersey, deposes and says that the lock on bag marked Complainant's Exhibit A was made by the firm of R. Neumann & Co. and sold to T. B. Peddie & Co., traveling bag manufacturers, in the said city of Newark.

HENRY ROEMER.

Subscribed and sworn to before me this 12th day of November, 1883.

[L. S.]

J. F. KUHN,
Notary Public, N. J.

Sworn to before me this 12th day of Jan., 1884.

TIMOTHY GRIFFITH,
U. S. Commissioner.

Endorsed: Circuit court of the United States, southern dist. of New York. William Roemer *vs.* David Neumann, Gustav
12 Bernheim, and Carl Neumann. In equity. William Roemer, complainant, 269 Broome St., Newark, N. J. U. S. circuit court. Filed Nov. 13th, 1883. Timothy Griffith, clerk.

13 Circuit Court of the United States, Southern District of New York.

WM. ROEMER
vs.
D. NEUMAN *et al.*
} In Equity.

On motion, after hearing counsel for both parties, leave is hereby granted the complainant to file, within ten days from the date of the filing of this order, a supplemental bill setting up the prior suit in the circuit court for the district of New Jersey, between said complainant and A. O. Headley, for infringement of the letters patent upon which this suit is based and the proceedings herein and the result thereof.

A copy of said supplemental bill, &c., be served upon Messrs. Van Sanborn & Hauff, who have appeared for defendant- for the purposes of this motion only.

WM. J. WALLACE.

Consented to.

W. C. HAUFF, *For Def't.*
BRIESEN & STEELE,
For Compl't.

14 [Endorsed:] Circuit court of the U. S., southern dist. of N. Y. W. Roener *vs.* D. Neuman & *al.* In equity. Order allowing complainant to file supplemental bill. U. S. circuit court. Filed Jan. 12, 1884. Timothy Griffith, clerk.

15 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN, GUSTAV BERNHEIM, and CARL NEUMANN. } In Equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

William Roemer, a resident of Newark, in the county of Essex and State of New Jersey, brings this his supplemental bill of complaint against David Neumann, Gustav Bernheim, and Carl Neumann, doing business in the city of New York, in the county and State of New York, and also in the city of Newark, county of Essex, and State of New Jersey, under the firm name and style of R. Neumann & Co., and respectfully shows—

That on or about the 13th day of November, 1883, your orator filed his bill of complaint in this honorable court against the abovenamed David Neumann, Gustav Bernheim, and Carl Neumann, stating the issue of letters patent No. 208,541 to the firm of Roemer Brothers, assignee of your orator, on the 1st day of October, 1878, for an improvement in locks for traveling bags; the subsequent transfer to your orator of all the right, title, and interest of said firm of Roemer Brothers in said letters patent, the infringement thereof by said defendants, and praying for an injunction to restrain further infringement of said letters patent, and for the recovery of the damages suffered by your orator, and of the profits unlawfully made by said defendants by reason of said infringement, and also for a process of subpœna to bring said defendants into court.

16 And your orator further shows that said defendant, David Neumann, has been served with process of subpœna, and that said defendants have not yet appeared and answered said bill of complaint, and that the time for so doing has not yet expired.

And your orator further shows to your honors that heretofore, namely, on or about the 5th day of January, 1881, your orator brought a suit in equity, in the circuit court of the United States for the district of New Jersey, against Albert O. Headley, for infringement of your orator's said letters patent; and said cause having come on for final hearing on proofs taken by both parties thereto, and having been fully argued by counsel for the respective parties, and having been duly submitted, decision was rendered therein and a decretal order was, on or about the 21st day of December, 1883, duly entered and filed in the office of the clerk of said court, at the city of Trenton, in said State and district of New Jersey, confirming and sustaining the validity of said letters patent No. 208,541, and grant-

ing the relief sought by said bill of complaint, including an injunction and an order for an accounting for damages and profits, and payment of costs to the complainant, and that said defendants in the present suit have had full notice thereof.

WILLIAM ROEMER.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } ss:

William Roemer, being duly sworn, deposes and says that he has read the foregoing supplemental bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge.

WILLIAM ROEMER.

Subscribed and sworn to before me this fifteenth day of January, 1884.

[SEAL.] WILLY G. E. SCHULTZ,
Notary Public, Kings County, N. Y.

Certificate filed in N. Y. Co.

17 U. S. Circuit Court, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN. } In Equity.

The clerk of this court will please enter my appearance as solicitor for the defendant, David Neumann, in the above-entitled cause.

Dated New York, Feb'y 4th, 1884.

WM. C. HAUFF,
Solicitor for Defendant, David Neumann.

Office and post-office address, 41 Park Row, New York city (P. O. box 2883).

Endorsed: U. S. circuit court, south. dist. of New York. In equity. William Roemer *vs.* David Neuman. Notice of appearance. W. C. Hauff, sol. for defendant. Office and post-office
18 address, 41 Park Row, New York city (P. O. box 2883). U. S. circuit court. Filed Feb. 4, 1884. Timothy Griffith, clerk.

19 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN, Impleaded with GUSTAV BERNHEIM and CARL NEUMANN. } In Equity.

The answer of David Neumann, defendant, to the bill of complaint of William Roemer, complainant, filed November 13, 1883, and to the supplemental bill of complaint of said complainant, filed January 17, 1884.

This defendant, now and at all times hereafter saving and reserving unto himself all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors, insufficiences, and imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer, answering, says—

20 That he has been informed and admits it to be true that letters patent of the United States, numbered No. 208,541, dated the first day of October, 1878, were issued and delivered to Roemer Bros. for alleged improvement in locks for traveling bags, but this defendant is not informed, save by said bill of complaint, and does not know whether or not application was made for said letters patent as stated in said bill, nor whether or not at the time of making said application said complainant duly assigned all his right, title, and interest to the firm of Roemer Bros., nor whether or not said Roemer Bros. is a firm, nor whether or not such proceedings were had thereon as stated in said bill, or what, if any, proceedings were had thereon, and he therefore denies the same and leaves the complainant to make such proof thereof as he shall be advised is material.

And this defendant, further answering, on information and belief denies that by reason of said letters patent and alleged assignment there was granted or secured to said Roemer Bros., their heirs, administrators, or assigns, or intended so to be, any full or exclusive right or liberty of making, constructing, using, or vending to others to be used the said alleged invention or improvement as claimed in said bill, and likewise denies that by virtue thereof said Roemer Bros. became the sole owners of all the rights and privileges claimed in and by said bill of complaint to be granted and secured in and by said letters patent.

And this defendant, further answering, says that he is not informed, save by said bill of complaint, and does not known whether or not said Roemer Bros. assigned all their rights, title, and interest, or any right, title, or interest in said letters patent to William Roemer, nor whether or not said William Roemer is now the complainant in this suit or the inventor of said alleged improve-

21 ment, nor whether or not said assignment was duly recorded in the United States Patent Office, as alleged in said bill,

and he therefore denies the same and leaves the complainant to make such proof thereof as he shall be advised is material.

And this defendant, further answering, says that he does not know and is not informed, save by said bill of complaint, whether the complainant became or now is the sole and exclusive owner of said letters patent, or of the alleged inventions or improvement claimed in said bill to be described therein, or of all or any of the rights or privileges alleged in said bill to be granted and secured or intended to be granted and secured thereby, nor whether or not said complainant has invested or expended large or any sums of money or has been to great trouble in and about said invention or for the purpose of carrying on business of manufacturing or selling said locks for traveling bags or making the same profitable to himself or useful to the public, and he therefore denies said several allegations and leaves the complainant to make such proof thereof as he shall be advised is material.

And this defendant, further answering, on information and belief denies that said alleged invention is of or has been of great or any benefit and advantage, or that large or any quantities of locks were made according to said invention, or sold by complainant, to the great or to any advantage of the public, or that the public generally or any part thereof have generally acknowledged or acquiesced in complainant's alleged rights, or that by any acts of this defendant or any one acting in concert with him the complainant is hindered or prevented from realizing or receiving large or any gains or profits to which complainant is legally entitled by reason of said letters patent.

And this defendant, further answering, on information and belief alleges that the construction of lock as set forth and described in said letters patent is disadvantageous and impractical, and that from the fact of said lock being supplied in separate parts
22 the parts of said lock are liable to become lost, and said locks are difficult of application to bag frames or other articles, and do not find favor with the trade, and that for some or all of said reasons said locks do not find a ready sale and are not sought for by purchasers.

And this defendant, further answering, denies that he has ever contrived to injure the complainant or to deprive him of any benefits or advantages which would have accrued to him or to which he is legally entitled, as alleged in said bill, and likewise denies upon information and belief that he has before the commencement of this suit or at any time, without the license or allowance or against the will of complainant or in violation of complainant's rights or in infringement of the said letters patent No. 208,541 unlawfully or wrongfully or in defiance of any rights of complainant made, constructed, used, or vended to others to be used any locks for traveling bags made according to or employing or containing said invention, or that he or his confederates still continue so to do, or that he is threatening to make any infringing locks or to supply the market therewith or to sell the same, and likewise denies that he defies any rights of complainant under said letters patent, or that he causes

the complainant great or any loss or injury or deprives him of great or any gains or profits to which he is legally entitled; and this defendant likewise denies that he has received or enjoyed or is now receiving or enjoying any gains or profits to which complainant is legally entitled by reason of said letters patent.

And this defendant, further answering, says that the locks alleged in said bill to be an infringement are very different in kind from what is described in the said letters patent No. 208,541 and in the specification annexed thereto, and are of an entirely different construction from that described in said specification, and that he has not infringed and still does not infringe upon the rights and
23 privileges alleged in said bill to be secured to the complainant by said letters patent and assignments, and this defendant submits that he should not be compelled to make any discovery in regard to the locks made and sold by him.

And this defendant, further answering, denies upon information and belief that by any acts of this defendant any one has been encouraged or induced to infringe said letters patent No. 208,541, or disregard any rights of complainant thereunder, as alleged in said bill; and this defendant likewise denies that he has used said alleged invention of complainant or has made any preparation or expressed any determination to do so, or has been guilty of any unlawful acts or has disregarded or defied any rights of the complainant, as alleged in said bill.

And this defendant, further answering, upon information and belief denies that he has disregarded any notice of said complainant or any request of said complainant, or that this defendant continues to make or sell or at any time made or sold any locks which are infringements of said patent without right, as alleged in said bill.

And this defendant, further answering, upon information and belief denies that the said alleged invention so patented as aforesaid is of great or any utility or value or the same has been extensively introduced into public use, or that the public generally or any portion thereof have acquiesced in and acknowledged the complainant's alleged exclusive rights to the same or to any portion thereof.

And this defendant, further answering, upon information and belief denies that the complainant was the first or original inventor of said alleged improvement in locks for traveling bags described in said letters patent No. 208,541, or that the same is described in said letters patent No. 208,541 in such full, clear, and exact terms as required by law, and likewise denies that said alleged
24 improvement had not been known or used before the complainant's alleged invention thereof.

And this defendant, further answering, says that he is informed and believes it to be true that the same invention and discovery and the same principle and combination or substantial and material parts thereof patented in and by said letters patent No. 208,541 were, more than two years prior to the said application of complainant for letters patent therefor and prior to the alleged in-

vention thereof by complainant, mentioned and described in several printed publications, and also in letters patent granted by the United States and foreign countries, and, among others, had been so mentioned and described in—

U. S. letters patent No. 163,629, dated May 25, 1875, to Gustav Bernheim.

British letters patent No. 136, granted in 1856 to Joseph Schloss.

Design patent of the United States No. 2228, granted Crane and Traugh December 12, 1865.

United States letters patent No. 110,412, dated December 20, 1870, to H. Willard.

United States letters patent No. 132,412, dated October 22, 1872, to Daniel Read.

Letters patent granted provisionally in Great Britain to Moritz Wolfskey, January 15, 1864, for improvement in locks or fastenings for bags.

British letters patent No. 5886, of 1830, to John Arnold.

British letters patent No. 3280, of 1863, to William Clark.

British letters patent No. 2814, of 1865, to Pfeiffer.

British letters patent No. 1575, of 1876, to Abel.

British letters patent No. 1102, of 1872, to G. Luttringhaus.

British letters patent No. 1727, of 1875, to M. Kosminski.

United States letters patent No. 49207, dated August 1, 1865, to Bernard Steinmetz, and the reissue thereof, No. 3765, dated December 14, 1869.

French letters patent, dated June 22, 1852, to Fillou and Leblanc.

French letters patent, dated July 5, 1852, to Thiriet.

French letters patent, dated December 7, 1852, to B. Steinmetz.

Design registrations of Samuel Fisher, No. 293,537, dated August 14, 1875, and No. 298,257, dated February 5, 1876, registered on said dates, respectively, in the design office, 25 Southampton buildings, London, England.

U. S. letters patent No. 55290, dated June 5, 1866, to George Havell.

U. S. letters patent No. 190,907, granted May 15, 1877, to William Roemer.

U. S. letters patent No. 177,020, granted May 2, 1876, to William Simon, and reissue thereof, No. 9772, dated June 21, 1881.

U. S. letters patent No. 195,233, granted September 18, 1877, to William Roemer.

U. S. letters patent No. 194,715, granted August 28, 1877, to Abram Oberndorfer.

And in other letters patent and printed publications, whose names, numbers, and dates are not at present known to defendant, but which, when known, he prays leave to insert herein.

And this defendant, further answering, on information and belief says that the said alleged invention and improvement or substantial and material parts thereof set forth and claimed in and by the said letters patent No. 208,541 were known to and publicly used, manufactured, and sold by divers persons in the United States and else-

where long before the alleged invention or discovery thereof by said complainant and for more than two years before his application for a patent therefor, and had been so known and publicly manufactured, sold, and used by the following persons, at the following places mentioned after their respective residences, namely:

26

Gustav Bernheim, of New York city, and Carl Neumann and Robert Flocke, both of Newark, New Jersey, at said New York city and Newark.

George Havell and James Roberts, both of Newark, New Jersey, at said Newark and elsewhere.

The members and employés of the former firm of Stevens, Roberts & Havell, now Roberts & Havell, of Newark, New Jersey, at said Newark and elsewhere.

Samuel Fisher and Carl Lang, both of London, England, at New York city, Newark, New Jersey, and elsewhere.

Charles Kupper, of Newark, New Jersey, at said Newark.

Bernhardt Schmidt, of Newark, New Jersey, at said Newark.

Hermann Oppenheimer, of New York city, at said New York city and elsewhere.

Joseph Schloss, now deceased, formerly of Paris, France, at New York city and elsewhere.

Jonathan Koch, of New York city, of [at] said city and elsewhere.

George B. Jenkinson, of Newark, N. J., at said city and elsewhere.

William Heller, of New York city, at said city and elsewhere.

Richard C. Jenkinson, of Newark, New Jersey, at said Newark and elsewhere.

James H. White, of New York city, at said city and elsewhere.

Albert O. Headley, of Newark, New Jersey, at Newark and elsewhere.

E. Jost, of Newark, N. J., at said Newark, N. J.

Oscar Barnett, of Newark, N. J., at said Newark.

Robert W. Chapman, of Newark, N. J., at said Newark and elsewhere.

Isidor Levy, of Newark, N. J., at said Newark and elsewhere.

27

The members and employés of the firm of Riley and Osborn, formerly Riley and Lynch, of Newark, N. J., at said Newark and elsewhere.

And to many other persons whose names and residences are at present unknown to defendant, but whose names and residences when learned he prays leave to insert herein.

And this defendant says that the locks made, used, or sold by him, the making, using, and selling of which are charged in said bill to be a violation and infringement of complainant's patent No. 208,541 and of his alleged exclusive rights, as set forth in said bill, were lawfully made, used, and sold under and in accordance with letters patent No. 238,037, of February 22, 1881, belonging to the firm of R. Neumann & Co., or in which said firm has an interest, and of which firm said defendant, David Neumann, is a member; and this defendant says, on information and belief, that such locks

do not contain the alleged invention, discovery, improvements, and combinations, or some or any of them described and claimed or attempted to be claimed in and by said patent No. 208,541, and do not infringe said patent No. 208,541.

And this defendant, further answering, upon information and belief alleges that the description of the alleged invention of said complainant, as set forth in the specification annexed to said patent No. 208,541, is incomplete, ambiguous, uncertain, and misleading, and that said specification does not explain the principle of the said alleged invention.

And this defendant, further answering, on information and belief alleges that said complainant has not given to the public sufficient notice, as required by § 4900 of the Revised Statutes of the United States, that the article which he alleges he has made, sold, and introduced under the patent No. 208,541 was patented, and has not fixed on or to said article or otherwise marked on the same the word "patented" and the date or day and year when said patent No. 208,541 was granted.

28 And this defendant, further answering, says that he has been informed and believes it to be true that complainant brought a suit in equity, in the circuit court of the United States for the district of New Jersey, against Albert O. Headley for alleged infringement of complainant's said patent No. 208,541, and that in said case a decision was rendered and a decretal order was filed in favor of said complainant; but this defendant is not informed, save by the present bill of complaint, and does not know whether or not said decretal order granted the relief sought, as alleged in the present bill of complaint, and he leaves the complainant to make such proof thereof as he shall be advised is material.

And this defendant, further answering, on information and belief denies that said Headley cause was fully argued or duly submitted, as alleged in said bill, and on information and belief alleges that the proofs in said Headley cause were very meagre and utterly insufficient to enable the court to fully consider said cause or to establish the validity of said letters patent or the novelty and utility of the alleged invention described and contained therein, or to determine the said cause, and alleges that this defendant was not a party or privy or interested in said Headley cause, and denies that he has had any other or fuller notice of any proceeding in said Headley cause than that herein contained, and this defendant makes no admission of any kind as to the regularity or sufficiency of any of the proceedings in said Headley cause, and submits that for the above reasons said Headley cause should not serve as a precedent or be given any weight in any of the proceedings herein, and should not be allowed to prejudice this defendant in any manner.

And this defendant, further answering, says that the alleged improvements mentioned in said letters patent did not require

29 any invention and were not the proper subject-matter of letters patent, but were modifications of locks long ago in use which would readily be suggested to a mechanic of ordinary skill, and that the said letters patent are wholly void, both for want of

novelty and want of an invention, and that the complainant is not entitled to any decree declaring said patent valid, nor for any account or injunction or any relief, as prayed for in said bill of complaint.

And this defendant, for the reasons hereinbefore recited, submits that he ought not to be restrained or enjoined, provisionally or perpetually, nor be compelled to account or make any payments of any income, gains, profits, costs, or damages, as prayed in the bill herein, and denies that he has obtained the same or any of them unlawfully, as charged in the bill herein, and denies that the complainant is entitled to any relief as prayed in his bill herein, and submits that he should not be compelled to make any further or fuller answer than that herein contained; but, without admitting that any other matter contained in the said bill of complaint material to be answered unto and not herein and hereby sufficiently answered is true to his knowledge and belief, submits that the complainant is not entitled to the relief prayed for in his bill, nor to any relief prayed whatsoever against him; all of which this defendant is ready to aver, maintain, and prove as this honorable court shall direct; and this defendant prays the same advantages from this his answer as if he had demurred to said bill where a demurrer would have been proper or had pleaded to said bill when a plea would have been proper, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained, and prays that all orders hereinbefore entered and all steps taken against this defendant herein be set aside and annulled, and that this defendant may be relieved therefrom.

DAVID NEUMANN,
By GUSTAV BERNHEIM,
Att'y-in-Fact.

W. C. HAUFF,
Sol'r for Def't.
J. VAN SANTVOORD,
Of Counsel for Def't.

Office and post-office address, 41 Park Row, New York city (P. O. box 2883).

CITY AND COUNTY OF NEW YORK, } ss:
Southern District of New York, }

Gustav Bernheim, being duly sworn, deposes and says: I am attorney-in-fact for the defendant, David Neumann, named in the foregoing answer subscribed by him through me, his said attorney. I have read the said answer and know the contents thereof, and the same is true of my own knowledge except as to the matters therein stated on information and belief, and as to those matters I verily believe it to be true; and I further say that said answer is subscribed by me as such attorney-in-fact, the said defendant, David Neumann, being at present absent from this country.

GUSTAV BERNHEIM.

Subscribed and sworn to before me this first day of March, 1884.
[L. S.] W. HAUFF (29),
Notary Public, N. Y. Co.

(Endorsed: U. S. circuit court, southern district of New York. In equity. William Roemer *v.* David Neumann, impleaded. Answer of defendant, David Neumann. W. C. Hauff, def't's sol'r. J. Van Santvoord, of counsel for def't. Office and post office address, 41 Park Row, New York city (P. O. box 2883). Filed March 3, 1884.)

31 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER
v.
DAVID NEUMANN, Impleaded with GUSTAVE BERNHEIM and CARL NEUMANN. } In Equity.

The replication of William Roemer, complainant, to the answer of David Neumann, defendant.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will
32 aver, maintain, and prove his said bill of complaint and supplemental bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant—

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct,
33 and humbly prays as in and by his said bill he has already prayed.

WILLIAM ROEMER,
Complainant.

(Endorsed:) United States circuit court, So. district of N. Y. In equity. William Roemer *vs.* David Neumann, impleaded, &c. Replication. Briesen & Steele, counsel for complainant, 229 Broadway, New York. U. S. circuit court. Filed Mar. 7th, 1884. Timothy Griffith, clerk.

34 At a stated term of the circuit court of the United States, held in and for the southern district of New York, at the court-house, in the city of New York, on the 16th day of May, 1884.

Present: The Honorable William J. Wallace, circuit judge.

WILLIAM ROEMER *vs.* DAVID NEUMAN.

A motion having been made for leave to amend the answer herein and the same coming on to be heard on the oral examination of John W. Lieb, and on the affidavits of Gustav Bernheim, J. W. Lieb, and Fabre du Faur, for defendant, and upon the affidavit of William Roemer, on his own behalf: Now, after hearing counsel for the respective parties, it is ordered that the defendant have leave (upon making the payment of $20.00 hereinafter mentioned) to amend the answer herein, and that the answer thereupon stand amended by inserting therein the names of witnesses alleged to have had prior knowledge & use of the invention claimed in the complaina-t's patent as follows:

John W. Lieb, of Newark, New Jersey, at said Newark & New York city.

Jacob Lagowitz, of and at the same places.

35 Leopold Haas, of New York city, at said city, and a- Newark, New Jersey.

It is further ordered that the complainant may, if he so elects, on or before the first Monday in July, 1884, dismiss his bill without costs or he may then file a replication to the answer as so amended.

It is further ordered that the defendants pay to the complainant or his solicitor the sum of twenty dollars as a fee for counsel for complainant for attending upon the examination of said Lieb and for opposing this motion.

It is further ordered that the oral examination of said Lieb, heretofore taken, be stricken out, and that if the complainant file a replication to the answer as above amended the defendant have thirty days wherein to take testimony in support of the answer and compl't afterwards have 60 days wherein — take testimony in rebuttal.

WILLIAM J. WALLACE.

(Endorsed:) U. S. circuit court, south. dist. of N. Y. In equity. William Roemer *vs.* David Neuman. Order allowing to defendant to amend answer. U. S. circuit court. Filed May 16, 1884. Timothy Griffith, clerk.

36 *Amendment to Answer.*

U. S. Circuit Court, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN. } In Equity.

The amendment to the answer of the respondent to the bill of complaint exhibited against him November 13th, 1883, and to the supplemental bill exhibited against him January 17, 1884, by the above-named complainant.

Now this respondent, appearing and, pursuant to an order filed herein May 16th, 1884, further answering, says:

And it is further alleged by said defendant that the said William Roemer was not the first or original inventor of the alleged invention alleged to be described and claimed in the letters patent No. 208,541, set forth in the bill of complaint, but, on the contrary, that John W. Lieb and Jacob Lagowitz, both residing at Newark, New Jersey, and Leopold Haas, residing at New York city, had prior knowledge and made prior use of such alleged invention, at said cities of Newark and New York and elsewhere, before the time of any supposed invention thereof by said Roemer, and that, in view of the said prior knowledge and use of said Lieb, Lagowitz, and Haas, the said letters patent of the complainant are void and
37 the device therein claimed lacking in any patentable invention; and the defendant prays as in his answer he has heretofore prayed.

DAVID NEUMANN,
By GUSTAV BERNHEIM,
Att'y-in-Fact.

W. C. HAUFF,
Def't's Sol'r.
J. VAN SANTVOORD,
Of Counsel for Def't, 41 *Park Row, New York City.*

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } ss:

Gustav Bernheim, being duly sworn, deposes and says: I am attorney-in-fact for the defendant, David Neumann, named in the foregoing amendment to the answer subscribed by him through me, his said attorney. I have read the said amendment to the answer herein and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on information and belief, and as to those matters I verily believe it to be true; and I further say that said answer is subscribed by me as such attorney-in-fact, the said defendant, David Neumann, being at present absent from this country.

GUSTAV BERNHEIM.

Subscribed and sworn to before me May 19, 1884.
[L. S.]
CHARLES S. HAYES,
Notary Public (127), *N. Y. Co.*

[Endorsed:] (U. S. circuit court, southern district of New York. In equity. William Roemer *v.* David Neumann. Amendment to the answer. W. C. Hauff, def't's solicitor, 41 Park Row, New York city. Filed May 19, 1884.)

38 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN, Impleaded with GUSTAVE BERNHEIM and CARL NEUMANN. } In Equity.

The replication of William Roemer, complainant, to the amended answer of David Neumann, defendant.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said amended answer, for replication thereunto says that he will aver, maintain, and prove his said bill of complaint and
39 supplemental bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said amended answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said amended answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

WILLIAM ROEMER,
Complainant,
By BRIESEN & STEELE,
His Counsel.

40 (Endorsed:) United States circuit court, So. district of N. Y. In equity. William Roemer *v.* David Neumann, impleaded, &c. Replication to amended answer. Briesen & Steele, counsel for complainant, 229 Broadway, N. York. U. S. circuit court. Filed July 7th, 1884.

41 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER, Complainant,
vs.
DAVID NEUMANN, Impleaded, &c., Defendant. } In Equity.

Please take notice that we shall proceed to take proofs for final hearing on the part of the complainant, under the 67th rule of the supreme court for courts of equity, as amended, and in accordance with the statutes in such case made and provided, and in pursuance of the rules and practice of this court, before George F. Betts, Esq. an examiner of this court, under said statutes and rules, at our office, No. 229 Broadway, New York city, N. Y., on the 19th
42 day of March, 1884, at 2 c'clock in the afternoon.

We desire the evidence to be adduced in this cause to be taken orally.

You are invited to attend and cross-examine the witnesses produced. The examination will be adjourned to such time and place as may be required, without further notice.

Dated New York city, 17th March, 1884.

Very respectfully, WILLIAM ROEMER,
Complainant,
By BRIESEN & STEELE,
His Counsel.

To W. C. Hauff, Esq., defendant's solicitor.

43 United States Circuit Court, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN, Impleaded, &c. } In Equity.

Testimony taken on behalf of the complainant, on their *prima facie*, case under and pursuant to the 67th rule in equity, as amended, before George F. Betts, Esq., a standing examiner in this court.

It is consented that the witnesses may be sworn by Samuel R. Betts, Esq., United States commissioner.

Met pursuant to notice hereto annexed.

Present: A. v. Briesen, Esq., of counsel for compl't, and W. C. Hauff, Esq. of counsel for def't.

229 BROADWAY, NEW YORK,
March 19, 1884—2 p. m.

Counsel for complainant offers in evidence—

Letters patent No. 208,541, dated Oct. 1st, 1878, and granted to Roemer Bros., assignees of William Roemer, for an improvement in locks for satchels, and the same is marked "Complainant's Exhibit Patent, S. R. B., U. S. comm'r, March 19th, 1884."

Also original assignment by Henry Roemer and George Roemer, trading under the firm name and style of Roemer Bros., to
44 William Roemer, of said letters patent, with certificate of record thereof, said assignment bearing date Feb. 21, 1880, recorded March 2d, 1880, and the same is marked "Complainant's Exhibit Assignment, S. R. B., U. S. comm'r, March 19, 1884."

Also original assignment by William Roemer to George Roemer and Henry Roemer, constituting the firm of Roemer Bros., of said letters patent when issued, together with the certificate of record thereon, which assignment bears date Sept. 25, 1878, recorded Sept. 26, 1878, and the same is marked "Complainant's Exhibit First Assignment, S. R. B., U. S. comm'r, March 19, 1884."

Counsel for complainant asks whether or not counsel for defendant desires proof of execution of both said assignments.

Counsel for defendant, not being familiar with the handwriting of the various assignors, must ask such proof.

Counsel for complainant also offers in evidence certified copy of the record of the pleadings and proofs in the cause entitled William Roemer ag't Albert O. Headley, which was pending in the circuit court of the United States for the district of New Jersey, and the same is marked "Complainant's Exhibit Headley Record, S. R. B., U. S. comm'r, March 19, 1884."

Also certified copy of the opinion of his honor, Judge Nixon, in the said Headley suit, and the same is marked "Complainant's Exhibit Judge Nixon Opinion, S. R. B., U. S. comm'r, March 19, 1884."

Also certified copy of decree entered in said Headley suit, and the same is marked "Complainant's Exhibit Headley Decree, S. R. B., U. S. comm'r, March 19, 1884."

Also a model, and the same is marked "Complainant's Exhibit Neumann Lock, S. R. B., U. S. comm'r, March 19, 1884.

45 Also a model which is marked "Complainant's Exhibit Infringing Lock, S. R. B., U. S. comm'r, March 19, 1884."

Also the sworn statement filed in the clerk's office of this court, in compliance with the order of January 12th, 1884, on the 1st of March, 1884, and the same is marked "Complainant's Exhibit Defendant's First Statement, S. R. B., U. S. comm., March 19, 1884."

Counsel for complainant asks counsel for defendant to admit the genuineness of said statement.

Counsel for defendant admits the genuineness thereof.

Counsel for complainant also asks counsel for defendant to admit that defendant has made and sold locks like "Complainant's Exhibit Neumann Lock," and like "Complainant's Exhibit Infringing Lock," before the filing of the bill herein, during the year 1883.

Neither the defendant nor any of the makers of such locks being present, counsel for defendant cannot, of his own knowledge or responsibility, make such admission.

Counsel for complainant also offers in evidence a satchel, and the same is marked "Complainant's Exhibit Neumann Satchel, S. R. B., U. S. comm., March 19, 1884."

Counsel for complainant asks counsel for defendant to admit that the defendant has manufactured and sold such frames and locks as appear on such "Exhibit Neumann Satchel."

Counsel for defendant makes the same answer to this request as to the last preceding one.

FRANK V. BRIESEN, a witness called on behalf of complainant and being first duly sworn, deposes and says in answer to questions by complainant's counsel:

46 My name is Frank v. Briesen; age, 30; residence, New York city; business, counsellor-at-law. I am the party who signed as witness to Complainant's Exhibit First Assignment. I recognize the signature of William Roemer on said exhibit as the complainant's signature, having frequently seen him write. I should not have subscribed as a witness to said exhibit had I not seen the complainant sign it.

Cross-examination waived.

FRANK v. BRIESEN.

Subscribed and sworn to before me this 19th day of March, 1884.

SAM'L R. BETTS,
United States Comm., South. Dist. of N. Y.

Counsel for complainant also offers in evidence a traveling bag, which is marked "Exhibit D for Complainant, 13 April, 1881, W. Paterson, ex'r," together with a certificate from the clerk of the circuit court for the district of N. J. to the effect that the same is the Exhibit D filed in said court in the suit of Roemer *vs.* Headley, and which was used in the final hearing of said cause.

Also a model marked "Exhibit D 1 for Headley, W. P., U. S. com., Oct. 21, 1881," together with a certificate from the clerk of the last-mentioned court to the effect that the same is the "Exhibit D 1" filed in said court in the suit of Roemer *vs.* Headley, and which was used in the final hearing of said cause.

Also a model marked "Exhibit D 2 for Defendant Headley, W. P., U. S. com., Oct. 21, 1881," together with a like certificate from said clerk.

Also a model marked "Exhibit D 3, W. P., exam., Oct. 21, 1881," together with a like certificate from said clerk.

Adjourned to Friday, March 21, 1884, at 10 a. m.

47 FRIDAY, *March* 21, 1884—10 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

LOUIS OSWALD, a witness called on behalf of complainant, and having been first duly cautioned and sworn, deposes as follows in answer to questions by complainant's counsel:

My name is Louis Oswald; I am 43 years old; I live in Newark, N. J.; I am a bag-maker, interested with A. F. Eggers, of Newark.

Q. 1. Look at the lock marked "Exhibit Neumann Lock" and state what, if anything, you know about it.

A. That's a satchel lock of R. Neumann & Co., of Newark; it's manufactured by them. I bought these locks with the frames from that firm in 1882 and 1883.

Q. 2. Are you the same Louis Oswald whose affidavit, entitled in this cause, I now show you?

A. Yes, sir.

Counsel for complainant offers in evidence the affidavit of this witness, which is now on file in the clerk's office of this court and which was subscribed and sworn to on the 5th of January, 1884, before J. F. Kuhn, notary public.

Q. 3. I will read that affidavit to you. Please state whether its contents are true.

A. That is true.

Counsel for complainant requests the officer to certify that "Complainant's Exhibit Neumann Lock" is brought here by a messenger from the clerk's office of this court, and that the same exhibit was marked "Exhibit Neumann Lock for Complainant, J. F. Kuhn, notary public," before it was marked by Mr. Betts as an exhibit, on March 19, 1884.

The officer certifies that such is the fact.

48 Q. 4. Look at "Complainant's Exhibit Neumann Satchel" and state what, if anything, you know respecting the place of manufacture of locks constructed like that on that exhibit.

(Objected to as immaterial.)

A. I have seen that lock in Neumann's office, in Newark—I mean R. Neumann & Co.—in Washington street, Newark; it was offered to me to buy it by Mr. Neumann; I think it was about two months ago.

Q. 5. Was that the first time you ever saw such a lock?

A. That was the first time.

Direct closed.

Cross-examination by Mr. HAUFF:

Cross-Q. 6. Have you seen that identical lock on "Complainant's Exhibit Neumann Satchel," in Neumann & Co.'s office, as you state in answer 4?

A. I can't say that; I didn't mark the lock.

Cross-Q. 7. How did you come to make your said affidavit herein of January 5, 1884?

A. Well, I have seen Mr. Roemer. He told me I had to be a witness for him, for he knows that I bought locks from Neumann; so I went along with him to the lawyer's office and signed what I couldn't refuse, to be true.

Cross-Q. 8. You say he told you you had to be a witness for him. How did he give you to understand that you had to be a witness for him? Did he say anything as to what would be done in case you refused?

A. knew that Roemer had some quarrel with Neumann just about this lock. He didn't say anything what would happen if I refused or not.

Cross-Q. 9. Did you buy locks like "Complainant's Exhibit Neumann Lock" at the request of said William Roemer, the complainant?

A. No, sir.

Cross-Q. 10. You bought them because you were a customer of Neumann & Co.'s. Is that it?

49 A. Yes, sir.

Cross-Q. 11. Are you still a customer of theirs?

A. Yes.

Examination closed.

LOUIS OSWALD.

Subscribed and sworn to before me this 21st day of March, 1884.
SAMUEL R. BETTS,
United States Commissioner, Southern District of New York.

OLIVER DRAKE, a witness called on behalf of complainant and being first duly cautioned and sworn, testifies as follows:

My name is Oliver Drake; I am 35 years of age; residence, Newark, N. J.; by occupation a solicitor of patents and expert in patent causes. I have testified as an expert in a number of patent cases before the United States courts, some of which related to bag fastenings and locks. I have read the letters patent No. 208,541, of October 1, 1878, which are now shown me, and I think I understand the contents thereof. I made an affidavit in this cause, sworn to on the 5th day of January, 1884, before Charles H. Pell, notary public; that affidavit is now before me and its contents are true.

Counsel for complainant offers in evidence said affidavit, which is now on file in this court.

Q. 1. Will you compare Complainant's Exhibit Neumann Lock with Complainant's Exhibit Infringing Lock, now shown you and to which said affidavit refers?

A. I have compared them. I find them to be precisely the same in construction and operation.

Q. 2. Please compare Complainant's Exhibit Neumann Lock with the device described and shown in said letters patent No. 208,541 and state the result of your comparison.

50 A. I have compared them and find "Exhibit Neumann Lock" to be practically and almost identically the same in construction as the device shown and described in said letters patent No. 208,541; in every essential particular I find the two devices to be identically the same.

Q. 3. Please compare also the lock on "Complainant's Exhibit Neuman's Satchel" with the device shown and described in said letters patent No. 208,541 and give the result of the comparison.

(Objected to as immaterial.)

A. I have examined "Complainant's Exhibit Neumann Satchel." I find that to be substantially the same in some particulars as the device shown and described in patent No. 208,541, but differing somewhat in certain features of construction. I find that the ends of the locks in "Complainant's Exhibit Neumann Satchel," which correspond with the end pieces B B in the patent, to be practically the same—that is to say, they perform the same function; they are, however, struck up from sheet metal, but they are inserted in the open ends of the body of the lock, the extent of the insertion being limited by a shoulder practically the same as those marked B B in the patent referred to, and are secured to the bag frame by a rivet in the same manner.

Q. 4. State whether or not the said "Exhibit Neumann Lock" and "Neumann Satchel" contain the device which is described in

the first claim or that described in the second claim of said letters patent No. 208,541, or both claims.

A. I am of the opinion that they contain the same elements described in both of the claims of the patent, and that said elements also perform substantially the same functions as those described in the claims referred to.

Direct examination closed.

Cross-examination by Mr. HAUFF:

(Counsel for defendant excepts to calling the statement of the witness of January 5, 1884, an affidavit, the same not being sworn to.)

Cross-Q. 5. Please give your reasons why you find "Exhibit Neumann Lock" to be practically and almost identically the same construction as the device shown and described in patent No. 208,541, as you state in your answer 3. Please give all your reasons in detail.

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A. My reasons are, in brief, that the body and end pieces of the lock in said "Exhibit Neumann Lock" are constructed and operate precisely the same as the body and end pieces described and shown in the patent referred to.

Cross-Q. 6. The specification of said patent 208,541 states: "The invention consists principally in forming the body of the lock case with open ends and in combining the same with cast blocks or end pieces." Is not the result of this construction that the end pieces close the open ends of the lock case, and that, as appears in the drawing of said patent, one such end piece forms an abutment or brace against which strikes the spring operating the bolt C?

A. The result spoken of by the counsel is a fact resulting from the adjustment of the parts, undoubtedly—that is, the closing of the open ends of the lock case. In regard to the adjustment and operation of the spring the result is undoubtedly the same as indicated in the question of counsel, although the spring does not seem to be shown or described in the patent, the inventor evidently not having thought it necessary to do so, as he uses the following language in the paragraph preceding the claim, to wit: "The other parts of the lock are not necessary to show."

Cross-Q. 7. The inventor of the patent 208,541 is thus enabled to form the lock case with open ends, and thus cheapen the construction of the lock. Is that not the object of this invention?

A. The lock is thereby rendered easy of construction, undoubtedly. The inventor himself says in his specification that "the principal object of the invention is to reduce the expense of the lock case," &c., and evidently that is a fact.

Cross-Q. 8. Then, in your judgment, the principal object of the invention is to reduce the expense of the lock case, and forming the body of the lock case with open ends tends to such reduction of expense; is that not so?

A. Is is not my province to give an opinion as to the inventor's object, but I am of the opinion that the forming of

52

the lock case with open ends does tend to make it easy of construction and cheap.

Cross-Q. 9. Then, if a lock case should be formed with closed ends, so that this tendency to make it easy of construction and cheap would fall away, would you still consider such a lock case to be within the scope of the invention of patent 208,541?

(Objected to as not cross-examination and as hypothetical, no lock case having the ends closed having thus far been referred to in any part of the witness' testimony, and also because it does not appear that the patent is for a lock case only.)

A. If a lock case were made with the ends entirely closed, so as to make it more difficult of construction, there might be some force in the question of counsel, but as a matter of fact in both "Exhibit Neumann Lock" and "Complainant's Exhibit Infringing Lock," as well also as in "Complainant's Exhibit Neumann Satchel," the cases are made with open ends and the end pieces are inserted therein, substantially as shown and described in patent 208,541.

Cross-Q. 10. And this "force in the question of counsel," which you name in your last answer, would still hold good if a lock case entirely closed were supplied with blocks similar to the blocks B B of patent 208,541. Is that correct or not; and, if not, why not?

(Same objection.)

A. I am afraid I should not be able to answer the question unless such a lock case as counsel supposes were shown to me.

Cross-Q. 11. Please look at the device, "Defendant's Exhibit Bernheim 1875 Lock," also illustrated by "Defendant's Exhibit Bernheim Model," both said exhibits being now on file in this case in the clerk's office of this court, and state whether the same has
53 not got a lock case, made of suitable material, bent into a U form, said lock case being formed with open ends.

(Objected to as not cross-examination, and counsel for defendant is informed that he makes the witness his own by entering into this new matter, and the witness is informed that he must not answer that question in his capacity as complainant's witness, but that if he desires to answer as defendant's expert witness he may do so.)

Defendant's counsel submits to the court that he has the perfect right to inquire into the scope of the complainant's alleged invention to ascertain what sort of a case defendants have to meet, the defendants having but one chance.

Complainant's counsel replies that the things referred to in question are not exhibits in the cause; no witness has been examined respecting them, and that defendant has no right to draw this witness into a fishing excursion respecting any structure which defendant's counsel may choose to ask him about, and repeats his instruction to the witness.

Counsel for defendant denies the truth of the imputation contained in the last statement of complainant's counsel relative to a fishing excursion.

A. My answer being subject to the restrictions of counsel and also to the fact that I have had no previous opportunity of thought upon the matter, I would say that the lock case referred to in the question is undoubtedly constructed with open ends, but I am bound to add that the end pieces used in combination therewith are entirely different in construction, do not enter the lock case, and they perform an entirely different function from that described in respect to the end pieces in patent No. 208,541, to wit, one of said end pieces engages with the locking mechanism and serves to unlock the same, if I understand it correctly.

54 Cross-Q. 12. What is the function "described in respect to the end pieces, in patent No. 208,541?"

A. They serve as a means by which to receive and hold the handle rings, and also, with the aid of rivets, to hold the lock to the bag frame, as well as to close up the open ends of the lock case, as I understand it.

Cross-Q. 13. In "Defendant's Exhibit Bernheim 1875 Lock" and "Defendant's Exhibit Bernheim Model," the lock case or shell is inserted into the end pieces; is not that so?

(Same objection and instruction to witness as to Cross-Q. 11.)

A. That appears to be so, but one of the ends is movable and operates the locking mechanism, as before stated, whilst the other seems to be for no other purpose but to close up the open end of the lock case and to render the lock symmetrical and uniform in construction and appearance.

Cross-Q. 14. And the degree to which the lock case or shell can enter the end pieces is limited by the abutment at the end or outside of said end pieces; is that not correct?

(Same objection and instruction to witness as to Cross-Q. 11, and also as it does not appear which of the two long pieces in the exhibits referred to is the lock case or shell.)

A. The covered ends of the end pieces would undoubtedly limit the extent of the projection of the lock case in said ends, but they do not appear to be constructed or used with that object in view, one of them being used chiefly as an ornament and the other to operate the locking mechanism, its motion being limited by a slot in the top of the lock case, as it appears to me.

(Recess to 2.30 p. m.)

After recess.

Present: Counsel as before.

Cross-Q. 15. Supposing a lock case entirely closed at the
55 ends were supplied with handle-holders in the manner of the device "Exh. D 3, W. P., exam., Oct. 21, 1881," introduced in evidence by complainant's counsel, would such a structure be within the scope of patent 208,541?

(Same objection and instruction to witness as in Cross-Q. 11.)

A. That exhibit appears to be within the scope of the construction embodied in the second claim of said patent, which claim does not appear to be limited to a lock case having open ends, but reads as follows: "The end pieces B B of a lock case, made with shoulders *d*, for defining their position relative to the body A."

Cross-Q. 16. Please detail all your reasons why you consider said exhibit to be within the scope of said patent.

(Same objection and instruction.)

A. My reason is that the end pieces in said exhibit are made with shoulders for defining their position relative to the body or lock case.

Cross-Q. 17. Which are the end pieces, as you call them, in said exhibit?

(Same objection and instruction.)

A. The parts which extend beyond the ends of the lock case and have the curvatures for receiving the handle rings.

Cross-Q. 18. And the shoulders of said end pieces in said last-named exhibit you evidently consider to be the ends of those parts extending beyond the ends of the lock case and which abut against such ends of the lock case; is that correct?

(Same objection and instruction.)

A. I should say that practically they were in that case.

The cross-examination relative to the lock of the "Complainant's Ex. Neuman Satchel" is "*de bene esse.*"

Cross-Q. 19. Do you consider the lock in "Complainant's Exhibit Neumann Satchel" to have open ends in the sense of patent 208,541; if so, why?

56 A. I do, for the reason that those open ends receive the projecting ends of the end pieces substantially in the same manner and for the same purpose as in the patent referred to.

Cross-Q. 20. And this you consider to be so, although these openings to receive projecting ends of what you call end pieces are made in the roof or top of the lock case; is that correct?

A. Yes, sir; you are correct.

Cross-Q. 21. Then, if a projecting end of any handle-holder is received in an opening of the lock case you consider such arrangement to be within the scope of patent 208,541, no matter whether such opening is at the end or in the roof of the lock case; is that so?

A. I am not prepared to say that some such construction might not be made as would avoid that shown and described in the patent; but the openings in the end of the lock case and the end pieces in "Complainant's Exhibit Neumann Satchel" differ from the patent only in degrees—that is to say, the end pieces are of much thinner metal and the openings in the ends of the lock case are correspondingly small, in my view of the matter.

Cross-Q. 22. Why do you say that the openings are in the end of the lock case on "Complainant's Exhibit Neumann Satchel?"

A. I wish to be understood as saying that they are practically so because they receive the ends of the end plates, and the projecting ends of the lock case serve merely as a seat upon which the outer ends of the end plates rest.

OLIVER DRAKE.

Cross-examination closed.
No redirect.

Subscribed and sworn to before me this 21st day of March, 1884.
SAM'L R. BETTS,
United States Comm'r, South. Dist. of New York.

Adjourned to Friday, March 22, 1884, at 11 a. m.

57 FRIDAY, *March* 22, 1884—11 a. m.

Met pursuant to adjournment.
Present: Counsel as before.

FREDERICK T. HEY, a witness called on behalf of complainant, and being first duly sworn, deposes and says in answer to questions by complainant's counsel:

My name is Frederick T. Hey; age, twenty-five; residence, Newark, N. J.; a lawyer by occupation. I am one of the subscribing witnesses in the paper marked "Complainant's Exhibit Assignment." I drew that instrument myself. I know Mess. Henry & George Roemer, who signed it; they signed it in my presence at the time named in the paper.

FREDERICK T. HEY.

Examination closed.
No cross-examination.

Subscribed and sworn to before me this 22d day of March, 1884.
SAM'L R. BETTS,
United States Comm'r, South. Dist. of New York.

58 Complainant rests his *prima facie* case.

59 STATE OF NEW YORK, } ss:
City and County of New York, }

August Schlarbaum, being duly sworn, deposes and says that he is the person deputized by the United States marshall to serve the annexed writ, and that on the 4th day of September, 1884, between the hours of 1 p. m. and 2 p. m., at No. 76 Duane St., New York city, he served the said writ on Gustav Bernheim, one of the persons named in said writ, by then and there delivering to and leaving with said Gustav Bernheim a copy of the annexed writ and at the same time showing him the annexed original.

AUGUST SCHLARBAUM.

Subscribed and sworn to before me this 5th day of September, 1884.

CHARLES M. THOMAS,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

60 *Alias.*

The President of the United States of America to Gustav
[L. S.] Bernheim and Carl Neumann, impleaded with David Neumann, Greeting:

You are hereby commanded, as we have before commanded you, that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of October, A. D. 1884, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by William Roemer, and do further and receive what the said court shall have considered in that behalf; and this you are not to admit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the fourth day of September, in the year one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth.

61 TIMOTHY GRIFFITH, *Clerk.*

BRIESEN AND STEELE,
Compl't's Sol's.

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of October, 1884, or the bill will be taken *pro confesso* against them.

T. G., *Clerk.*

[Endorsed:] I certify that the within writ was served upon the within-named defendant at the time and in the manner stated in the annexed affidavit of August Schlarbaum. Dated New York, Sep. 16, '84. Joel B. Erhardt, U. S. marshal, so. dist. of New York. U. S. marshal's office, New York, Sept. 4, 1884. I hereby depute August Schlarbaum to serve the within subpœna. Joel B. Erhardt, U. S. marshal. U. S. marshal's office, S. D. N. Y., Sep. 4, 1884. Received. U. S. circuit court. Filed Sep. 16, 1884. Timothy Griffith, clerk.

62 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER, Complainant,
vs.
DAVID NEUMANN *et al.*, Defendants.
} In Equity. No 2920.

Please take notice that we shall proceed to take proofs for final hearing on the part of the complainant, in rebuttal, under the 67th rule of the Supreme Court for courts of equity, as amended, and in accordance with the statutes in such cases made and provided and in pursuance of the rules and practice of this court, before George F. Betts, Esq., a standing examiner of this court, under said statutes and rules, at our office, No. 229 Broadway, New York city, N. Y., on the 21st day of January, 1885, at 10.30 o'clock in the forenoon.

We desire the evidence to be adduced in this cause to be taken orally.

You are invited to attend and cross-examine the witnesses produced. The examination will be adjourned to such time and place as may be required without further notice.

Dated New York city, January 15, 1885.

Very respectfully, BRIESEN & STEELE,
Compl't's Solicitors.

To Wm. C. Hauff, Esq., def'ts' solicitor.

63 NEW YORK, *January 21st*, 1885—10½ a. m.

Met pursuant to notice hereto annexed.

Present: A. v. Briesen, Esq., of counsel for complainant, and W. C. Hauff, Esq., of counsel for defendants.

Testimony in Rebuttal Taken on Behalf of Complainant.

OSCAR BARNETT, a witness called on behalf of plaintiff in rebuttal, and having been first duly sworn, deposes and says: My name is Oscar Barnett. I am 49 years old. I reside in Newark, New Jersey, at No. 253 Mulberry street. I am an iron founder by occupation.

Q. 1. Did you make any castings for lock cases for one Charles Küpper?

A. Yes, sir.

Q. 2. When first?

A. The first order of anything of that kind I recollect was on January 17, 1878.

Q. 3. Have you here any book which will show when first you received an order for lock cases from said Küpper?

A. Yes, sir; there's the book and there's the order.

(The witness produces a book and points to an entry on page 236 thereof, which entry reads as follows: "Chas. Küpper, city; sample of bag lock case from wood pat.," said order being under the date of January 17, 1878, which appears at the head of said page.)

Q. 4. In whose handwriting is that order?

A. My own handwriting.

Q. 5. Please look at "Complainant's Exhibit D 3" and state whether you recognize the same.

A. This is not like the one that I cast for them, in this respect: That the one I cast for him was in one piece, while this is in two pieces.

64 Q. 6. Please look at "Complainant's Exhibit D 1" and state whether you recognize it.

A. I can't see any difference between that and the other. We made something that resembled that one when the two pieces are together.

Q. 7. How together cast, or what?

A. Cast in one piece of iron.

Q. 8. How do you know that the entry of January 17, 1878, in your book is the first entry relating to locks for Küpper?

A. Because I ascertained the fact by going over the books carefully.

Q. 9. What is this book here?

A. The order book.

Q. 10. Is it the only order book you have?

A. No, sir.

Q. 11. Is it the only order book for the period it covers?

A. Yes, sir; but only for that kind of work. We have two order books—one for orders for malleable castings and one for grey iron. This is the grey iron book.

Q. 12. Might it not be that you made these lock castings for Mr. Küpper in malleable iron?

A. They might have been made of malleable iron afterwards, but this is the first of that description of castings that we made for him. I made other castings for him previous to that date.

Q. 13. Those other castings which you made previous to that date, of January 17, 1878, for Küpper, were they lock castings?

A. Some of them were for the inside work of locks; none for the outside.

Q. 14. I will read you from the testimony of Mr. Küpper, as given on the 12th day of May, 1884 (questions and answers 125 to 131, inclusive), and ask you to state what you know about the matter to which Mr. Küpper there refers.

A. That is all so, except as regards the dates—I don't know, but the facts are so.

Q. 15. Why did you have this interview with Mr. Küpper?

A. Because I met him at one of his neighbor's offices—

65 Mr. Ballard's office—and he stated to me that Mr. Roemer had brought suit against him for infringement, and asked me if I could give him the date that we had made those lock-case castings for him. I then went back to the shop and went over the books and ascertained the date, as I have already testified. The book here to-day is the same book I had with me at that interview to which Mr. Küpper refers.

Direct closed.

Cross-examination:

Cross-Q. 16. How long have you known Mr. Küpper?

A. About ten years, I think.

Cross-Q. 17. And have you done work for him during all that period?

A. I don't know whether I have or not. I may have been acquainted with him before I commenced to do work for him.

Cross-Q. 18. As near as you can tell, when first did you do any work for him?

A. I think it was about 1876, but I can only guess at it.

Cross-Q. 19. In your answers 5 and 6 I understand you to say that you made something for Küpper which resembled "Complainant's Exhibits D 3 and D 1," when the two pieces are together. Please specify what you refer to by "two pieces."

(Objected to as already answered in answer 7.)

A. This Exhibit D 3 is in two pieces.

Cross-Q. 20. Then I understand that what you made for Küpper, which resembled "Complainant's Exhibits D 1 and D 3," had the casing or upper part of the device cast onto the lower part or bottom plate of the device, but that in other respects "Complainant's Exhibits D 1 and D 3" are the same as what you cast for Küpper; is that correct?

A. As far as I know, it is; as near as I can judge, they resemble them.

Cross-Q. 21. Whom do you mean in your answer 6 by "we?"

A. I mean "me"—myself.

66 Cross-Q. 22. Did you do this casting for Küpper yourself or did you have others to assist you?

A. The work was done by others than myself.

Cross-Q. 23. Who are those others? Name them.

A. I have upwards of 100 employees. I could not give you the names of them, and I don't know whom I had employed at that time.

Cross-Q. 24. Can you not name any of the parties you refer to in answer 22? If so, name all you can.

A. Iv'e no recollection of any of them at that time.

Cross-Q. 25. Could you ascertain their names from your books? If so, will you please ascertain their names and let us know them?

A. I could not tell anything about it from my books or otherwise.

Cross-Q. 26. Is there any person besides yourself who could ascertain these names or any of them? If so, please tell us who.

A. No, sir. The foreman I had at that time is dead, and he's the only man that would know anything about it; his name was Hermann Helbrecht.

(Defendants' counsel states that the reference in this testimony to the order book is objected to unless said book be offered in evidence, and cross-examination thereon is "*de bene esse.*")

(Counsel for complainant states that the book is now in the hands

of defendants' counsel for inspection and examination on any matter contained therein, but that the book, being the property of the witness, counsel for complainant cannot offer it in evidence so as to make it an exhibit, as the rules require exhibits to be delivered to the clerk of the court at the hearing.)

Cross-Q. 27. What does "wood pat." in the entry referred to in your answer 3 mean?

A. They mean "wood patterns"—a wood model or pattern furnished me by Küpper to have castings made from.

Cross-Q. 28. When did Küpper furnish you said wood model?

A. At the time the order was given—Jan. 17, 1878.

Cross-Q. 29. And said wooden model or pattern furnished
67 you by Küpper was a model of a casting that you made for him, mentioned by you in your answers 5 and 6; is that so?

A. That is my impression.

Cross-Q. 30. What books are they to which you refer in your answer 8? Specify them.

A. My ledger and day book and also order books.

Cross-Q. 31. What were the castings made of which are referred to in the entry, on page 236 of your order book?

A. Grey iron.

Cross-Q. 32. Did you ever cast locks or lock cases for Küpper in two pieces?

A. I do not know.

Cross-Q. 33. How do you come to recollect, as you state in your Ans. 13, that those other castings which you made previous to January 17, 1878, for Küpper were for the inside work of locks and none for the outside?

A. I know that by reading the orders on the books.

Cross-Q. 34. Does your order book contain entries of orders to you from Küpper for castings prior to January 17, 1878?

A. Yes, sir; I think they do; I'm pretty certain they do—some of them.

Cross-Q. 35. Can you point out to us from the order book here present any entries of orders to you from Küpper for castings prior to January 17, 1878? If so, please point them out.

A. I don't think there is another order in that book from Mr. Küpper.

Cross-Q. 36. Was the occasion, on January 17th, 1878, the first time that Küpper ever spoke or made any communication to you about locks or lock castings having some resemblance to "Complainant's Exhibits D 3 and D 1?

(Objected to as not cross-examination.)

A. I don't know when was the first time; I don't know that he said anything to me at that time—Jan. 17, 1878.

Cross-Q. 37. But Küpper might have spoken to you or
68 made some communication to you in regard to such lock or lock castings prior to January 17, 1878, might he not?

A. I've no recollection of anything of that kind.

Cross-Q. 38. Will you swear that he did not?

A. To the best of my knowledge and belief, he did not. The only way I can swear is to the best of my knowledge and belief.

Cross-Q. 39. Do you know whether or not Küpper spoke to or made any communication to any one in your employ or connected with you in business prior to January 17, 1878, in regard to such locks or lock castings?

A. I do not.

Cross-examination closed.

Redirect examination:

Redirect Q. 40. How much time did you spend looking over the books for Küpper's first order for lock cases?

A. At least three days—myself and my assistants.

Redirect Q. 41. Please look at "Defendants' Exhibit Jenkinson Lock" now shown you and state how it compares with the locks which you cast for Küpper on the order of January 17, 1878.

(Objected to as not redirect.)

A. The outside appearance is pretty much the same, but the ends, I think, were like the ends of "D 1 and D 3"—that is, they had a recess for the rings.

Redirect Q. 42. What became of the wooden model which Küpper brought you with the order of January 17, 1878?

A. I think it was returned to Mr. Küpper, but I am not positive about it.

Redirect closed.

Recross:

Recross-Q. 43. Who are the persons who assisted you in looking over the books for Küpper's first order for lock cases? Name them.

A. Eugene H. Johnson, a clerk in my employ, and Thomas Kavanagh, my office boy, and myself.

69 Recross-Q. 44. I understand from your answer 51 that the locks which you cast for Küpper on the order of January 17, 1878, resembled in outside appearance "Defendants' Exhibit Jenkinson Lock," but the ends had a recess for the rings. Were the locks which you cast for Küpper on said order provided with any base plate; and, if so, was such base plate like that of "Complainant's Exhibits D 1 or D 3?

A. The ends of the castings, as I understand it, formed the base plate, the same as in Jenkinson's lock, but the base plate did not extend under the hollow of the lock.

Recross-Q. 45. In "Complainant's Exhibits D 1 and D 3" the recesses for the handle are joined together by a base plate extending under the hollow of the lock casing, and in the locks or lock casings which you cast for Küpper on the order of January 17, 1878, said recesses were not joined to one another by a base plate, but were held in place by being cast directly upon or to the extremities of the lock

case, the frame of the bag being intended to serve as a base plate for the lock case; is that correct?

A. I think it is.

Recross closed.

Examination closed.

OSCAR BARNETT.

Subscribed and sworn to before me this 21st day of Jan., 1885.

SAM'L R. BETTS,
U. S. Comm'r, S. D. of N. Y.

OTTO HANKO, a witness called on behalf of complainant, and having been first duly sworn, deposes and says:

Q. 1. What is your name, age, residence and occupation?

A. My name is Otto Hanko; I am 44 years old; I live in Newark, New Jersey, 13 Campbell street; I am a mechanic, working for the firm of Riley & Osborn, in Mulberry street, Newark.

70 Q. 2. Do you know John W. Lieb?

A. Yes.

Q. 3. Did you ever work under him; if so, when?

A. Yes; he was in Lagowitz & Co.'s firm. I don't know whether he was boss or not, but he had something to say to me. I came there in 1874, about May, and remained there about seven and a half years; that was for Lagowitz & Co.

Q. 4. What was your position at Lagowitz & Co.'s?

A. I was foreman of the frame and trimmings department and all the machinery, all around the shop.

Q. 5. Did you as such foreman have anything to do with locks for bags?

A. Certainly; all the locks that belonged to bags. Well, I had to make the patterns for samples to show, if they liked to make it. I had my hands to finish the locks and to fit in the combinations.

Q. 6. Please look at "Defendants' Exhibit Lieb Lock C" and state when first, if ever, you saw a lock of that construction.

A. I never saw that lock. I saw the lock on the outside, but not the combination of that lock.

Q. 7. What do you mean by "not the combination?"

A. Well, I mean this here, being in three pieces. I only saw the lock in one piece like that (pointing to "Lieb lock B"); the patterns for this "Lieb lock B" were made under my supervision.

Q. 8. If the locks had been made in three pieces and put on bags in that shop would you have known it?

A. It is possible that Mr. Lieb could have done it, and had them put on the bag by a trimmer, without my knowing it.

Q. 9. Please look at "Lieb lock A," "Lieb lock B," and "Lieb's experiment 1" and state which of these kinds of lock cases was made first, which second, and which last, at Lagowitz's shop.

A. This "Lieb lock B" was made first, and this "Lieb's experiment 1" was also made first, but not in malleable iron—in grey

iron; they were both made at the same time; this "Exhibit Lieb Lock A" was made after the others.

71 Q. 10. State whether Mr. Lieb had any interview with you about Lieb lock C last year?

A. Yes.

Q. 11. Tell us what took place at that interview?

A. He asked me if I recollected that he had made that lock (Lieb lock C). I said, "No, I could not recollect having seen it."

Q. 12. Where was that, and who was present?

A. At the office of Riley & Osborn, in Newark. There was another man with him whom I don't know.

Direct closed.

Cross-examination:

Cross-Q. 13. Do you know of Lieb experimenting in regard to locks while you were with Lagowitz & Co.?

A. Yes.

Cross-Q. 14. How do you recollect that "Lieb lock B" and "Experiment 1" were made at the same time and that "Exhibit Lock A" was made after the others?

A. Well, because I was foreman there and we made the first sample pattern to cast them.

Cross-Q 15. Are you on friendly terms with said Lieb?

A. I am not a friend to him any more than I am to you. He engaged me, I worked for him, and that's all. I have no ill-feeling to him.

Cross-Q. 16. Did you leave the employ of Lagowitz & Co. because you were discharged?

A. No; I went off myself.

Cross-Q. 17. Did you not have any difficulty with Lieb or any of the members of the firm of Lagowitz & Co. at any time?

A. We had no trouble. Sometimes I wanted more room for machinery and he did not want to give it.

Cross-Q. 18. Did you ever have to make out the pay-rolls of Lagowitz & Co. for the workmen who were employed there in your department?

A. Yes; I had to fix the books—what each man earned.

Cross-Q. 19. Did you ever have any difficulty with Lieb or any of the members of the firm of Lagowitz & Co. in regard to your manner of keeping these pay-rolls?

72 A. One time. Once I entered $3 in the pay-roll for a boy who wasn't there and kept the $3, and afterwards I did that again and the firm kept the book, but afterwards I went to Lieb's house and begged his pardon and returned him the money—the $3.

Defendants' counsel asks the examiner to certify that while the witness was delivering his above answer the complainant in person, who is here present, remarked, "Lagowitz did worse things than that."

Complainant's counsel denies the right of the examiner to make such certificate, the 67th rule not giving him the power to spread

upon the record matters that do not pertain strictly to the questions and answers of witness and the objections of counsel.

Defendants' counsel states that the examination of witnesses is to be conducted before the examiner in the same manner as such examination would be conducted before the court, and that if any interruption or any occurrence takes place which might in any way interfere with the orderly or regular examination of witnesses the examiner has the power and it is his duty to certify such occurrence or interruption upon the record, so that the court will have full information regarding the circumstances under which the examination was carried on.

Complainant's counsel admits that if there was an interruption the examiner has power to certify to the facts respecting the same, but he denies the right of the examiner to spread upon the record remarks which may pass between the complainant and complainant's counsel and which are accidentally overheard by the examiner or by the defendant's counsel if as matter of fact such remarks did not interrupt the proceedings.

The examiner states that though Mr. Roemer did make some such remark as that stated by defendants' counsel, yet it did not, in the examiner's opinion, interrupt any of the proceedings, and that therefore he deems no certificate necessary in the premises.

Cross-examination closed.

73 Redirect:

Redirect Q. 20. Did Mr. Lieb forgive you and retain you in his service after that?

A. Both Mr. Lieb and Mr. Lagowitz forgave me and kept me in their employ afterwards for about 3 to 6 months.

OTTO HANKO.

Examination closed.

(Recess until 2½ p. m.)

Met after recess.

OTTO HANKO, recalled for complainant, testifies as follows:

Q. 21. At that interview with Mr. Lieb last year what, if anything, was said about one Heilman?

(Objected to as immaterial.)

A. Lieb said, Don't you remember any more? And he makes marks with a pencil on a paper—what he meant—and he wanted to show me that they got the piece put under, and he asked me, You can remember any more? And I said, No. And he said, Mr. Heilman he remembers that he drilled the holes through the lock and that piece that he put under that keeps the lock together.

Q. 22. Which piece do you refer to in the last answer?

A. That piece (pointing to the inwardly projecting flat plate on one of the end pieces of Ex. Lieb Lock C).

Q. 23. After that did you see Heilman?

A. Yes; I saw Heilman the time I went home; I met him at some place in a saloon.

Q. 24. What took place between you and Heilman?

A. Well, he showed me that lock—not that same one, but another one made to show me how it was. Mr. Heilman asked me if I knew anything about that lock; I told him I did not know anything about it, but I said Mr. Lieb told me that Mr. Heilman remembered that he drilled the holes through that joint piece. Well, I
74 told Mr. Heilman, If you can swear to that, swear to it; I can't do it; and Mr. Heilman said he did not say so, but maybe he drilled some holes, but I couldn't say so for sure; he couldn't swear to that—that he drilled the holes.

Direct closed.

Cross-examination:

Cross-Q. 25. But Mr. Heilman did not say that, as a matter of fact, he did not drill the holes in that joint piece; he only said, in substance, that he could not recollect positively whether he did or did not drill such holes; isn't that so?

A. He said, Maybe I drilled and maybe not; I can't remember.

OTTO HANKO.

Subscribed and sworn to before me this 21st day of Jan., 1885.

SAM'L R. BETTS,
U. S. Comm'r, S. D. of N. Y.

FREDERICK W. HEILMAN, a witness called on behalf of complainant, and having been first duly sworn, deposes and says:

My name is Frederick W. Heilman; my age is 37 next Feb.; I live in Newark, N. J., at No. 314 Littleton avenue; I am a machinist by trade, working for J. Lagowitz & Co. I have been with — since August, 1876, except one year, when I was with Jost. I was with Jost from Feb. 1st, 1879, until May, 1880.

Q. 1. While you were with Lagowitz & Co., before 1879, what were your duties?

A. I was tool-maker then, making dies.

Q. 2. Did you or not have an opportunity to see the different locks made there?

A. Yes.

Q. 3. Look at "Defendants' Exhibit Lieb Lock C" and state whether or not you have seen one or more locks of that construction while you were with Lagowitz & Co.

75 A. I'm not sure about that. I would not like to swear that I did and I would not like to swear that I didn't, because I'm not certain about it.

Q 4. Did you have a conversation last year with Mr. Lieb about this lock—"Exhibit Lieb Lock C?"

A. Yes, sir.

Q. 5. Tell us what took place during that conversation.

A. Mr. Lieb asked me whether I remembered about this lock, hav-

ing made it. I told him I was not sure about it that I did see it; maybe I didn't. I told him I'd like to see Mr. Hanko about that, because he ought to know more than I did about it, for he was foreman at that time. Mr. Lieb asked me whether I could make an affidavit about this and I told him no; that I was not sure enough about it to swear on it.

Q. 6. And did you then see Mr. Hanko?

A. Yes, sir.

Q. 7. What took place then between you and Hanko?

A. Well, I asked him whether he could remember about this lock made out of three pieces. He said no; that's about all, I guess.

Direct closed.

Cross-examination:

Cross-Q. 8. Do you know whether or not Mr. Lieb was in the habit of experimenting in regard to locks?

A. Yes, sir.

Cross-Q. 9. During the time that you have been with Lagowitz & Co. you have known Lieb to experiment more or less in regard to locks and lock cases; is that not so?

A. Yes, sir.

Cross-Q. 10. How do you come to attend here as a witness to-day?

A. Mr. Roemer served a subpœna on me.

Cross-Q. 11. You will not swear positively that, as a matter of fact, Lieb never made a lock or locks like "Def'ts' Ex. Lieb Lock C," will you?

(Objected to as not cross-examination.)

76 A. I could not.

Cross-examination closed.

Examination closed.

FREDERICK WM. HEILMANN.

Subscribed and sworn to before me this 21st day of January, 1885.

SAM'L R. BETTS,
U. S. Comm'r, S. D. of N. Y.

FREDERICK WILLIAM LEIMBERGER, a witness called by complainant, and having been first duly sworn, deposes and says:

My name is Frederick William Leimberger; my age is thirty-nine years; my residence is Newark, N. J., No. 63 Winans avenue; my business is bag-making. I am now out of work. I was with Lagowitz & Co. from February, 1875, until August, 1878. I was foreman for them during the whole time. I was away about two months, and then I worked for Lagowitz until the last day of January, 1882. At that time I did not work as foreman.

Q. 1. While you were foreman with Lagowitz & Co. what were your duties?

A. I was over the bag department. We made bags and every-

thing that belongs to bags, shipping them, &c. At that time locks were put on the frames in my department, but only on some, not all. The kind we put locks on were what we called railroad bag frames. The rest were put on in the frame shop.

Q. 2. Please look at "Def'ts' Ex. Lieb Lock C" and state whether or not a lock of that construction was known to you while you worked with Lagowitz & Co.

A. No, sir; I never seen it before.

Q. 3. Is that or not a lock adapted to a railroad bag frame?

A. Yes, sir; it is.

Q. 4. If, while you were foreman of the bag department of
77 Lagowitz & Co. a lock of that construction had been attached to a bag frame would you or not have known of it?

(Objected to as calling for a conclusion.)

A. Well, I couldn't answer as positive. There is reasons for that. The reason is this: If such a thing as that is made new it is generally done in the frame shop first as an experiment. If it works all right then they brought it up to me.

Q. 5. If such a lock had been put on a frame and the bag was then attached to the frame by one of the bag-makers in that shop, as stated by Mr. Lieb in answer to Q. 33, which I will read you, would it or not have passed through your hands or under your observation?

A. That is another question that can't very well be answered direct, for the reason that Mr. Lieb would very often do things or have things done without the knowledge of the foreman. He was a kind of privileged character.

Q. 6. But if that lock when on a bag had been put in stock and then shipped to the New York store with the other bags would it then have come under your observation?

A. I would like to answer it in this way. It would be very likely if it was a new thing; it would be noticed by the bag-maker and the finisher, who would call my attention to it if I had not seen it myself.

Direct closed.

Cross-examination:

Cross-Q. 7. Can or cannot a lock like "Lieb lock C" be used on other frames than railroad bag frames?

A. This lock was made especially for a special frame at the time. I don't know of any other frame it is used on. Probably it could. By this lock I mean "Lieb lock B," not "Lieb lock C."

Cross-Q. 8. How many employees were working in the bag department, of which you were foreman, during the year 1877?

78 A. I couldn't say positive; from forty to one hundred. It depended on the season.

Cross-Q. 9. When a lock like "Def'ts' Ex. Lieb Lock C" has the parts put together in proper relative position and is attached to a bag frame its external appearance is very much like that of "Exhibit Lieb Lock B," is it not?

A. Its general appearance; yes.

Cross-Q. 10. And would a casual observer, under those circumstances, notice the difference in construction in said two locks?

A. A bag-maker would see at once that there was something different between the two.

Cross-Q. 11. While you were with Lagowitz & Co. Lieb was experimenting more or less in regard to locks and lock cases; isn't that so?

A. I have never seen him experiment myself.

Cross-Q. 12. Have you no knowledge of any kind as to his experimenting in that regard?

A. Not him personally, but his die-makers were experimenting for him. That I know.

Cross-Q. 13. How do you come to testify here to-day?

A. I was not subpœnaed. Mr. Roemer asked me to come here and said he would show me something, and when I agreed to come I had not the slightest idea what it was until he told me about this lock affair.

Cross-Q. 14. If a bag-maker were furnished a frame with a lock attached like "Lieb Lock Exhibit C," and also with a frame having a lock attached like "Lieb lock B," would such a bag-maker notice the difference in construction between said two locks; and, if so, why?

A. If he would examine them he would find that the one was out of one piece; the other out of three.

Cross-Q. 15. Would it be a part of his duty as a bag-maker to examine the locks to find out which was made of one piece and which of three?

A. No; of course not.

Cross-Q. 16. Then why do you say in answer 10 that a bag-maker would see at once that there was something different between the two?

79 A. Why, because if a man sees it he can tell the difference. That's no reason why it should be his duty to examine it.

Cross-examination closed.

Examination closed.

F. W. LEIMBERGER.

Subscribed and sworn to before me this 21st day of January, 1885.

SAMUEL R. BETTS,
U. S. Commissioner, S. D. of N. Y.

WILLIAM ROEMER, a witness called on behalf of complainant and having been first duly sworn, deposes and says:

My name is William Roemer. I am the complainant in this case. My age is forty-seven years. I reside at Newark, N. J., and am a manufacturer of bags, frames, and trimmings for the trunk and bag trade.

Q. 1. Please state whether or not you had any difficulty in pro-

curing the attendance of the witnesses Barnett, Hanko, and Heilman, who have testified here to-day.

A. Yes; I had. I requested them to give testimony for me in this suit. They refused to do so, and I was obliged to subpœna them, and Mr. Barnett, even after I served him with a subpœna, thought I could not take him out of the State of New Jersey, and I had to talk a good deal to him to convince him he had to come.

(Above question and answer objected to as immaterial and irrelevant.)

Q. 2. Can you produce the original subpœna which was issued out of this court for these three men?

A. Yes; here is the original.

(Same objection to question and answer.)

Subpœna produced by witness is offered in evidence by
80 complainant's counsel and marked "Complainant's Exhibit Barnett *et al.* Subpœna," S. R. B., U. S. commissioner, January 21, 1885.

Direct examination closed.
Examination closed.

WILLIAM ROEMER.

Subscribed and sworn to before me this 21st day of January, 1885.

SAMUEL R. BETTS,
U. S. Commissioner, S. D. of N. Y.

Adjourned to Friday, January 30, 11 a. m.

FRIDAY, *January* 30, 1885—11 a. m.

Met pursuant to adjournment.
Present: Counsel as before.

OLIVER DRAKE, a witness called on behalf of complainant and having been first duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Oliver Drake; age, fifty-six years next birthday; residence, Newark, N. J.; occupation, solicitor of patents and expert in patent causes.

Q. How did you fit yourself to be an expert in patent causes?

A. I have been a solicitor of patents for the last twenty years. Prior to my adopting the profession of solicitor of patents I had been engaged practically in mechanical pursuits for about twenty years. For the last twenty years I have made inventions a special branch of study, and especially those involving mechanical constructions, and have testified in numerous cases as an expert before the United States courts.

Q. 3. State whether or not you are a practical mechanic.
81 And, if not, what was the character of the mechanical pursuits about which you testified?

A. I was and am a practical mechanic, and served a regular apprenticeship. I was engaged principally in the manufacture of wheeled vehicles, which involves the working and manipulation of both cast and rolled metals, as well as woods and other kinds of materials.

Q. 4. A witness in this cause seeks to persuade us that the structure marked "Defendants' Exhibit Lieb Lock C," which I now show you, was made in about September, 1877, attached by rivets in that year to the frame of a traveling bag and afterwards taken off that frame in the same year. Can you tell from an inspection of said "Exhibit Lieb Lock C" whether the same was made in 1877, put on the frame, and taken off? In this connection, you may also refer to "Exhibits Lieb Lock A and Lieb Lock B," which admittedly were made in 1877.

A. From a careful inspection of "Exhibit Lieb Lock C" I find that the several parts were not made and adjusted to a bag frame at the same time. Some portions may have been made as early as 1877, but I find that the sliding plate or bolt was made and adjusted at a more recent date—perhaps not more than a year to two ago. Said bolts bear evidence of comparatively recent construction. That is evident from a total lack of any rust and the bright appearance of the parts which have been filed away, and the rivet which holds the finger piece in connection with the bolt presents also a fresh appearance. The rivets in the ends of the lock case appear to have been inserted or, at least, worked upon at a date more recent than the lock case itself, which is more or less covered with rust. I find also that the plates having the rivet holes and projecting from the end pieces into the lock case bear evidence of having been attached to said end pieces at a comparatively recent date. That is indicated by the apparent freshness of the soldering and the absence of rust, which attaches to the older parts—that is, the end pieces themselves and the lock case. I am satisfied that the bolt and the projecting plates just referred to are not nearly so old as the end pieces and the lock case. These differences between the parts
82 which I have described do not appear in "Exhibits Lieb Lock A and Lieb Lock B."

Q. 5. Please inspect the inner faces of the rivet holes of the plates that project from the end pieces of "Exhibit Lieb Lock C." Compare them with the inner faces of other rivet holes in the same exhibit and in "Exhibits Lieb Lock A and B" and tell us what you find.

A. I have made the examinations and find that the rivet holes of the plates that project from the end pieces are entirely free from rust and present very strong evidence of having been recently made, while the other rivet holes referred to in the several exhibits are more or less covered with rust—about the same as other contiguous portions of the parts referred to.

Q. 6. Were these rivet holes drilled or were they formed by casting, and do they or not show that rivets had actually been used to secure these plates to the frame of a traveling bag?

A. The rivet holes were drilled. There appears to be a slight

burr or roughness around the lower edge of the end rivet holes, which would indicate that those had not had rivets passed through them. However, I am not so clear on that point.

Q. 7. How do you know that they were drilled?

A. Because they are of a uniform size throughout the thickness of the plate and not tapering, as they would be if they were cast. Besides the marks of the drill appear when subjected to a magnifying glass.

Q. 8. If rivets had been used in them in the ordinary manner of using them, would these marks of the drill be still visible?

A. That would depend upon circumstances somewhat. If they had been subjected to considerable usage and too much friction against the rivet they would be likely to present a smoother or more polished appearance, but in the absence of such friction the marks of the drill might not be effaced.

Q. 9. The same witness, who seeks to persuade us that "Lieb lock C" was made as it is now in 1877, testifies also that the frame to which the said lock was attached had a catch piece on it for
83 interlocking with the bolt of said exhibit, and that the locking part of such frame was completed. What, if any, evidence, in connection with this assertion, do you find in the said exhibit?

A. I find, from examination, that the bottom edges upon the locking side of the bolt have a burr on them, which would seem to indicate that they had not been used, as if they had been those burrs would most likely have been removed.

Q. What evidence, if any, is there in that exhibit to show how a bottom plate, holding the usual tumblers, was actually secured therein, and how far was such bottom plate beneath the burr on the bolt?

A. There is evidence to show that a bottom plate has, at some time, been inserted in the lock case; and, if so, it would rest between the plates projecting from the end pieces and upon the edges of one side of the bolt, if this bolt were used; it looks as though it rested directly upon the bolt, and would have caused friction if used, and consequently would have cut out the burr.

Q. 11. Please compare the body of the lock case of "Exhibit Lieb Lock C" with the "Exhibit Lieb Lock B" and with "Exhibit Lieb's Experiment One" and state which two of these three exhibits, if any, were cast in the same mould or from the same patterns, or whether they were all cast in separate moulds.

A. I am inclined to think they were all cast in separate moulds, as I find a slight difference in the size, and yet there is evidence, also, that "Exhibit Lieb Lock C" and "Exhibit Lieb Lock B" were cast in the same mould, as they are so nearly of the same size and dimensions in every way that the slight difference that I observe in the thickness of the side wall, for example, might be occasioned by rapping previous to the drawing of the pattern from the sand. Upon a more careful inspection of these exhibits, I am inclined to think that this latter conclusion is right, and that the end pieces have been separated from the lock case, and the projecting plates

subsequently soldered in and fast to the end portions as they now appear, and the bottoms of the ends of the lock case filed
84 away for the purpose of receiving those projecting plates. I think that "Exhibit Lieb Experiment One" was manifestly cast in a separate mould.

Q. 12. Assuming that you are right in finding that the bottoms of the ends of the lock case of "Exhibit Lieb Lock C" had been filed away, as stated in your last answer, what relation did such filing bear to the burrs on the bolt and to what you term evidence of a "bottom plate having been inserted?"

A. I now find, upon a close examination with a glass, that the ends of the lock case, "Ex. Lieb Lock C," have actually been filed or ground out, the marks of the tool being plainly visible, and the sharp corners of the angles also prove such to have been the case; that would account for the appearance of the inside edges of the lock case and for the burrs on the bolt, instead of such appearances indicating that a bottom plate had been used, as I have previously stated.

Adjourned to Friday, February 6, at eleven a. m.

FRIDAY, *February* 6—11 a. m.

Met pursuant to adjournment.
Present: Counsel as before.

The witness, OLIVER DRAKE, continues his testimony on the direct examination:

Q. 13. Please compare Defendants' Exhibit Bernheim Patent No. 163,629, and particularly the subject-matter of the first class of same, with the "Defendants' Exhibit Schloss Lock" and state what you find.

(Objected to as immaterial and irrelevant.)

A. I find upon a careful examination of the patent and lock referred to that the same combination of elements embraced in the first claim of the Bernheim patent, 163,629, is shown in Defendants' Exhibit Schloss Lock, and that the elements perform the same
85 functions. The elements recited in the claim referred to are "the latch *e* upon the sliding plate *i*, that is connected to the moving end *f* of the bolt case, in combination with the stationary portion *g* of said case, and the box-shaped base *a*, into which the latch projects, substantially as set forth." As I said before, I find these identical elements in the Schloss lock referred to, and arranged and operating substantially as and for the same purpose. These elements are described in the body of the patent as follows: "The base *a* is box-shaped, and attached by the end flanges, *b*, to the valise frame, and at one side of the box there is an opening at *c* for allowing the inclined catch upon the other part of the bag frame to pass in and be latched. The bolt or latch *e* is upon the under side of the plate *i*, and passes down through a mortise in the box *a*, and this plate *i* extends to and is connected with the movable end

f of the lock case. The stationary portion *g* of the lock case is connected to the base *a* by the plates *l l*, that are fastened at their upper ends to said case, and their lower ends pass through slots in the base *a*, and they are bent or riveted so as to hold the case *g* and base *a* firmly together. The latch plate *i* is slotted where it passes the plate *l*, and the stud plate *o* is also slotted to pass these plates *l*." The only noticeable difference which I observe, and that seems entirely immaterial, is that the catch in Exhibit Schloss Lock passes through the box-shaped base and through the bag frame, and the hooks upon the other side of the bag frame engage with the catch, while in "Exhibit Bernheim Patent 163,629" the box-shaped base is somewhat deeper and the catch is contained therein instead of passing through the bag frame. That I regard as a mere colorable and unimportant variation; the result is the same in both cases. The lesser depth of the box-shaped base on one side in "Exhibit Schloss Lock" renders the "opening at *c*" referred to in the Bernheim patent unnecessary; in fact, this opening may be regarded as extending all the way across the box-shaped base in Exhibit Schloss Lock and lessening the depth of said base on that side of the lock, as I have stated above.

86 Q. 14. Please compare Defendants' Flocke Loose Clip Patent No. 279,733, and particularly the subject-matter of the 1st claim thereof, with the invention described in the Roemer patent No. 208,541, being the complainant's patent in suit, and state what you find.

A. I have examined the exhibits referred to and find the same combination of elements embraced in the first claim of Exhibit Flocke Loose Clip Patent as are shown and claimed in the Roemer Patent No. 208,541. With a lock before me such is shown, described, and claimed in said Roemer patent I find that claim one in the Flocke patent recites the same elements and would apply to the said Roemer patent and be just as applicable as it is in the said Flocke patent. The 1st claim of the Flocke patent is as follows: "The lock box or case B, having openings *b*, in combination with the clips for holding the rings *f*, substantially as described." The letters of reference, of course, are not the same in both patents. I find a slight difference in the structural arrangement of the elements named in the combination of the claim, but this difference of construction seems to me to be of little or no importance. The end pieces B in the Roemer patent are arranged to rest directly upon the bag frame, whilst in the Flocke patent they rest upon extended portions of the lock case, which portions of the lock case form a seat for the end pieces, or "clips" as they are called in the said Flocke patent, but these end pieces or clips extend into openings in the lock case and are provided with the notches to receive the handle rings and subserve the identical same purpose of the end pieces B in the Roemer patent, being held in position in substantially the same manner. I find that the second claim of the Roemer patent is as follows: "The end pieces, B B, of a lock case, made with shoulders *d* for defining their position relative to the body A, substantially as and for the purpose specified." This claim, as will be seen, refers to

the end pieces and is not limited in the structure of the end pieces except by the "shoulders *d* for defining their position relative to the body A." I find that the end pieces or clips in the Flocke patent referred to come within the terms of this claim without a shadow of doubt, as it is not limited in respect to the lock case or end pieces except, as already stated, by the shoulders, and said shoulders
87 for defining the position of the end pieces or clips relative to the body of the lock case are formed by the curvatures beneath which the handle rings pass, and the fastening rivets pass through both the lock case and the end pieces or clips as in the Roemer patent No. 208,541.

Q. 15. Please compare Exhibits Bernheim Patent, Schloss Patent, the Bernheim Locks, and the Schloss Lock with the invention described and claimed in complainant's patent No. 208,541 and state whether the invention specified in the last-mentioned patent is found in said prior patents and structures.

A. I have examined the exhibits referred to and find that the invention specified in the Roemer patent 208,541 is not found in either of said exhibits. I find that the device described in the Bernheim patent has no end pieces such as are described and shown in Roemer patent 208,541, nor is the lock case open at both ends; one end is provided with a movable end piece which is connected with and operates the latch plate; there are no recesses or notches for the handle rings in either end of the lock case or movable end-piece referred to nor do fastening rivets pass through said lock case or end piece, nor could such fastening rivets be passed therethrough without rendering the lock inoperative. The same may be said and will apply with equal force to the devices described and shown in the Schloss patent and Exhibits Schloss Lock and Bernheim Locks referred to. These differences in the construction and operation of the parts composing the several devices shown and described in the Bernheim patent and Schloss patent and in the Defendants' Exhibit Schloss Lock and in the Exhibits Bernheim 1875 Locks are so manifest that a further or more detailed description thereof seems to be needless.

Q. 16. How many pieces are necessary in the lock case of the Bernheim and Schloss structures and how many in the lock case of the Roemer patented structure—I refer to the lock case without regard to the end locks?

A. If I understand your question, there is only one piece in the Roemer lock case aside from the end pieces, whilst in the
88 Schloss lock and Bernheim locks there are two. I, of course, include the box-shaped bases as a part of the lock case in the last-mentioned locks.

Q. 17. How does this difference, in your opinion, affect the comparison between said locks, more particularly with respect to the means of attaching the lock cases and the end locks rigidly to the frames of the bags?

A. As I have already stated, I think it would be impossible to fasten by means of rivets passing through the ends of the lock cases and end pieces in the Schloss and Bernheim locks without render-

ing said locks absolutely inoperative, and therefore, for the reasons stated, the structural arrangement and operation of the lock described and claimed in Roemer patent No. 208,541 is not anticipated by the construction and arrangement of the Schloss and Bernheim locks.

Q. 18. Have you read the testimony of defendants' expert witness, Faber du Faur, in this suit; and, if yea, how does your opinion respecting the matters about which he was asked compare with his opinion?

A. I have read the deposition of Faber du Faur, and feel compelled to differ with him in a number of more or less important particulars, while in others I fully agree with him. For example, in his fourth answer he holds that, in view of the state of the art, the invention described and claimed in the Roemer patent No. 208,541 must be limited to a central portion (that is, the lock case) bent into a U form so as to form the top and sides of the lock case only. I have seen nothing in the state of the art which would so limit the invention. I see nothing to prevent the patentee from making said portion flat upon the top so that the top and side will be rectangular, and the end pieces to conform to the same. In other words, I think such a form would come within the terms of the claims, notwithstanding he describes, as his preferred form, the U.

He also holds in the same answer that the invention described in the Romer patent must be limited to a lock case entirely open at the ends, and to end pieces which form a support or supports for the spring or springs. I see no warrant for such a restriction, either in the description contained in the patent or in the prior state of the art, as disclosed by the several exhibits, whilst the end
89 pieces described and shown in the Romer patent perform this function and the ends of the lock case are entirely open. I see no reason for the limitation in those respects. In fact, I can scarcely conceive of an invention involving mechanical construction in which a skilled mechanic could not change the construction or form of the various parts to a greater or less extent without deviating in the slightest degree from the spirit of the invention or from the results accomplished thereby. I am of the opinion, however, that in view of the state of the art, the device described and claimed in the Roemer patent 208,541 must be limited to end pieces provided with notches or recesses to hold handle rings or catches which close the jaws of the bag, or other suitable purpose, as stated in the patent.

Adjourned to Monday, February 9, at 11 a. m.

MONDAY, *February* 9—11 a. m.

Adjourned to Wednesday, February 11, at 11 a. m.

WEDNESDAY, *February* 11—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

I cannot agree with Mr. du Faur in the further opinion expressed in the same answer, to wit, that the invention described and claimed in complainant's patent in suit is by the prior state of the art "restricted to the specific arrangement shown and described, and in particular to a central portion, bent into a U form, entirely open at the bottom and ends, and without any transverse pieces between which the lock mechanism is contained," &c. It seems to me that in order to warrant such a conclusion a lock of prior invention should be shown, with end pieces arranged to operate substantially
90 as in the Roemer lock, but with a central portion bent into other than a U form, and partially open at the bottom and ends, or with transverse pieces or braces between which the lock mechanism is contained. In other words, I may say, to make my meaning clearer, that a lock such as is shown in Complainant's Exhibit "Flocke Loose Clip Patent," if it were a prior invention, would, in my judgment, be an anticipation of the Roemer lock, under the patent in suit.

Mr. du Faur's statement, in continuation of the above quotation, and referring to the patent in suit, that "the invention consists in forming the transverse braces in separate end pieces or blocks inserted into the open ends of the central portion," &c., is entirely unwarranted. No intimation of the kind is found in the patent, or language from which such conclusion can be drawn. The end pieces do, as a matter of fact, subserve the purpose of the braces or cross-pieces, but the inventor does not limit himself in this respect, nor in my judgment would the construction of a lock, substantially as described and shown in the Roemer patent in suit, but with a bottom plate or with cross-pieces added, avoid the Roemer construction. If such were the case it is manifest that any invention could be appropriated and patents would afford no protection, but would be worthless.

I also differ with Mr. du Faur in the opinions expressed in his 5th answer, in respect to the devices shown in "Complainant's Exhibit Neumann Lock, Infringing Lock, and Neumann Satchel," and "Defendants' Exhibit Neumann Lock No. 2," to wit, "that they do not, in view of the prior state of the art, contain the invention recited in claims of complainant's patent, and his reasoning seems to me to be faulty. For instance, he says: "Complainant's Exhibit Infringing Lock" and "Complainant's Exhibit Neuman Lock" do not contain the invention * * * referred to in the 1st claim of the patent, "because they are not made in three pieces, like complainant's lock case," and "because in said locks the body * * * is not made with open ends, but has substantially closed ends, and has no end pieces fitting into open ends, as in complainant's
91 lock; on the contrary, the lock case proper has ends between which the lock mechanism is confined, and the hooks for the handles in 'Complainant's Exhibit Neumann Lock' and 'Complainant's Exhibit Infringing Lock' form parts of extended bottom plates, so that they could not be inserted with the central shell as in complainant's device." The reasoning, in my judgment, is fallacious, because in the two exhibits referred to all the elements of

the combination recited in the said first claim of the Roemer patent are present and arranged in substantially the same relations to each other, and in addition thereto is a bottom plate which connects the two end pieces; but said bottom plate does not take the place of either of the other elements or perform the functions of either. It is simply adding an element; and, as the patentee does not limit himself to a lock made in three pieces, I can see no reason why he should be so limited, and the same argument will apply in respect to the cross-pieces or braces in said exhibits between which the lock mechanism is contained. Moreover, both the alleged infringing locks have end pieces fitting into the open ends, as in complainant's lock, notwithstanding they are said to be parts of extended bottom plates. I cannot regard these devices in any other light than as a species of piracy, as it is termed, a mere attempt to evade liability—a practice which seems to be increasing year after year. In answer to the statement that in "Exhibit Neumann Lock" and "Exhibit Infringing Lock" "the lock is complete without the handle attachments," &c., it may be said that complainant might, if he chose, also make his lock the same way without affecting the construction covered in his patent, as there is not a word in the latter to limit him in that respect. As already observed, the cross-pieces between which the lock mechanism is confined in the two alleged infringing devices are simply additions. They do not take the place of or perform the functions of the end pieces in respect to the handle rings. In other words, if defendant dispensed with his end pieces he would then avoid the combination recited in the claim of complainant's patent; otherwise he would not. In answer to the statement of Mr. du Faur in same answer that Exhibit Neumann Lock and
92 Exhibit Infringing Lock are modifications of the locks shown and described in the Simon patent of 1876 of the locks, "Defendants' Exhibit Jost First Plate" and "Jost Second Plate," "Exhibit D 3," "Exhibit Jenkinson Lock," and "Exhibit Lieb Locks A B," it may be said, without admitting the correctness of the opinion, that, if correct, it would not necessarily affect the scope of complainant's patent or alter the fact that said Neumann lock and infringing lock embrace the same combinations claimed in said patent.

In regard to Mr. du Faur's effort in same answer to show that Exhibits Neumann Lock and Infringing Lock are locks like that shown and described in Defendants' Exhibit Flocke 1881 Patent and do not contain the invention referred to in the second claim of complainant's patent, I can only say that I cannot agree with him, for reasons which I have already expressed.

Nor can I agree with him in his conclusion that the locks "Defendants' Exhibit Neumann Lock No. 2" and "Complainant's Exhibit Neumann Satchel" do not contain the invention described and claimed in complainant's patent, for reasons which I have already expressed. I observe that in giving his reasons for the opinion above referred to he says, among other things, "the omission of the slits and clips" (open ends and end pieces) "leaves the lock complete without the handle fastenings," &c. The very same thing can

be said and with equal force in respect of complainant's lock, for if in it the end pieces or clips, as they have been termed, were omitted and the open ends of the lock case were closed up his lock would also be complete in itself; but the fact is that the end pieces and the openings are not omitted in either case.

In regard to the opinions expressed by Mr. du Faur in his sixth, seventh, eighth, ninth, tenth, eleventh, eighteenth, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-fourth, thirty-fifth, thirty-sixth, and thirty-eighth answers——

Adjourned to Saturday, Feb'y 14th, at 10½ a. m.

93 SATURDAY. *Feb. 14th*—10½ a. m.

Met pursuant to adjournment.
Present: Counsel as before.

The witness, OLIVER DRAKE, continues his answer and testimony:

I fully agree with Mr. du Faur, whilst in some others I do partially, and in some others I do not at all agree with him. For instance, in his nineteenth answer he states that in Exhibit Bernheim Model two fasteners only need to be used in securing the four parts thereof together and to the lock case, supposing both end caps were made immovable. I find, upon the contrary, that at least six fastenings are required, and I am unable to discover any way in which said model could be secured together and to the bag frame by means of two fastenings without ruining the locking mechanism.

Again, in his 39th answer he gives it as his opinion that Exhibit Headley Lock does not embody the invention described and claimed as new in Complainant's Exhibit Patent. I find, on the contrary, that said exhibit does embody the invention described and claimed in said patent for reasons which have already been given, and in such opinion I find myself supported by the opinion of his honor, Judge Nixon, in the case of William Roemer against Albert O. Headley, in the U. S. circuit court, district of New Jersey. In some other matters of perhaps but little importance I differ with him.

Q. 19. In view of the state of the art as disclosed by Defendants' Exhibit Patents and Structures, how do Complainant's Exhibit Infringing Lock and the lock on Complainant's Exhibit Neumann Satchel compare with complainant's patent in suit?

A. I am of the opinion that "Complainant's Exhibit Infringing Lock" and the lock on "Complainant's Exhibit Neumann Satchel" embody the invention described and claimed in complainant's patent in suit, the state of art being considered.

94 I find in Complainant's Exhibit Infringing Lock the combination of a body having open ends and end pieces applied thereto, substantially the same as those shown and described in complainant's patent in suit. I find, also, that the end pieces in "Complainant's Exhibit Infringing Lock" are provided with shoulders

for defining their position relative to the body, as are pointed out in the first and second claim in said patent. The fact that these end pieces in Complainant's Exhibit Infringing Lock are connected by a plate at the bottom I consider to be entirely immaterial.

The lock attached to "Complainant's Exhibit Neuman Satchel" I find also embodies the combination of a body having open ends and end pieces, that are applied thereto substantially in the same manner as in the patent above referred to—complainant's patent in suit. These end pieces also have the shoulders for defining their position relative to the body, substantially the same construction and combination as are embraced in the first and second claims of said patent. The only differences that I can discover between the lock on "Complainant's Exhibit Neumann Satchel" and those shown in the lock described and claimed in complainant's patent in suit are that the lock on "Exhibit Neumann Satchel" differs somewhat in design, and also the lock case has its ends extending beyond the openings to form a seat upon which the end pieces rest. One end of each of said end pieces, however, projects into the openings of the lock case and are limited by shoulders which abut against the ends of the lock case at the top. These differences seem to me to be entirely immaterial, as the results are the same in both cases. I find nothing in the prior state of the art which shows the same combination of elements arranged and operated for the same purposes. The various exhibits to which my attention has been called, and which show the prior state of the art, I think have been fully explained in my previous answers, as I understand them.

Direct examination closed.

95 Cross-examination:

Cross-Q. 20. Locks for satchels and bags can be made operative devices without the addition of a bottom plate, can they not? In this connection I call your attention to Exhibit D 2 for Headley and Defendants' Exhibit Roemer Lock Case.

A. I presume they could; I know of no reason why they could not.

Cross-Q. 21. The devices illustrated in Complainant's Exhibit Flocke Loose Clip Patent are operative locks without the addition of the clips *d d*, are they not?

A. I see nothing to hinder them from being operative, although without the clips there would be openings at each end and no means for attaching the handle rings.

Cross-Q. 22. Is not the upper case in Defendants' Exhibit Bernheim Certified Model a lock case open at both ends, the openings being closed by end pieces? In this connection you may also refer to "Defendants' Exhibit Bernheim Model."

A. Yes; I find these two exhibits show lock cases made in two parts, upper and lower, the open ends of the upper portion being covered by caps, one of which is movable and connected with and designed to operate a locking mechanism.

Cross-Q. 23. In the device illustrated in complainant's patent here

sued on one of the end pieces B serves as an abutment for a spring to hold the bolt in its locking position, or at any rate, is intended to serve as such an abutment; is that not so?

A. It seems to be constructed with that object in view, although it is not so described in the body of the specification that I remember. There is no reason why it should not be utilized for such a purpose, as well as to insert a cross-piece or partition for such a purpose.

Cross-Q. 24. Is the function of the blocks B, in securing the ends of the handle, not described as merely an incidental function in complainant's patent, for which these blocks may serve, "if desired?"

A. The phraseology is susceptible of such an interpretation.
96 The sentence reads as follows: "The blocks B may also serve, if desired, to secure the ends of the handle or the catches which close the jaws of the bag, and for other suitable purposes." This phrase may be interpreted also to mean that the blocks B may serve for any one of the several purposes mentioned.

Cross-Q. 25. Have not the Complainant's Exhibits Infringing Lock and Neumann Lock got extended bottom plates, with cross-creases in them, adapted to receive rings or other suitable devices to hold the handle or carrying strap, and in that respect do not said two exhibit locks resemble the device shown in Defendants' Exhibit Simon Patent, which shows a lock having an extended bottom plate with cross-creases *j*?

A. As I have already stated, I think Complainant's Exhibit Infringing Lock and Exhibit Neumann Lock show end pieces having creases, &c., and fitting into openings at the ends of the lock case; said end pieces are connected at the bottom by a plate, whilst the lock described and shown in Defendants' Exhibit Simon Patent shows a lock without any open ends, and consequently no end pieces inserted therein. It does show a thin, flat plate, which fits beneath the bottom of the lock case and extending beyond the ends thereof, and is provided with creases or openings, which might be utilized for handle rings or fastenings, if desired. I see but very little resemblance in the exhibits locks to the device shown in the Simon patent in respect to the end pieces. All that I can say with reference to the Simon device is that a lock secured to a plate at the bottom, which plate is provided with means for attaching the handles without any reference whatever to any other form of construction or operation, was not new at the date of the Roemer patent in suit.

Cross-Q. 26. Cannot a device like Defendants' Exhibit Bernheim Model be fastended to a bag frame by two rivets, one rivet passing through each end cap and through the upper and lower cases of the structure, a slot being left in the moving end cap, through which one of the rivets passes, holding said end cap in place, while leaving it free to move back and forth?

A. I am unable to see how such a thing could be done
97 without rendering the lock practically inoperative, unless the construction of the lock and the mechanism were changed.

(Recess to 1.45.)

After recess.

Cross-Q. 27. In what respect or respects would the construction of the lock and the mechanism have to be changed, and why?

A. It is very possible that such fastenings as you describe might be arranged to hold the lock by cutting slots in the movable end of the case and in the same end of the central portion, but it would be impracticable for the reason that the rivet in said movable end would have to be left very loose in order to admit of the free movement of said movable end and the catch plate, and that would leave the lock itself loose and liable to rattle at that end. Manifestly the present mode of fastening is the only practicable one, which requires from four to six fastenings.

Cross-Q. 28. Would said rivet in said movable end have to be left any more loose than the pin or rivet on which the upper part of the lock in Complainant's Exhibit Neumann Satchel turns or swivels and through which pin or rivet motion is communicated from said upper part of said lock to the tongues or catches which receive the hooks on the opposite jaw of said satchel to hold the mouth of the satchel closed?

A. No, sir; but the rivet referred to in Exhibit Neumann Satchel does not hold the lock to the lock plate, as I understand it.

Cross-Q. 29. Are the ends of the cases in Complainant's Exhibits Infringing Locks and Neumann Lock open?

A. Yes, sir; I understand them to be. They are certainly open at each side.

Cross-Q. 30. But they are closed sufficiently, so that an abutment for the spring which throws the locking bolts into their closing position is formed without the assistance of any end pieces; is not that so?

98 A. That is true, but at the same time the end pieces would subserve the same purpose; in fact, those tongues which form the abutments for the spring are intended more especially to fasten the lock case to the bottom plate, I should judge.

Cross-Q. 31. Are not the positions of the so-called end pieces in Complainant's Exhibits, Neumann Lock and Infringing Lock defined by the bottom plates in said locks?

A. In one sense of the word, they are. The fact still remains, however, that the shoulders also define their positions relative to the lock case, as the latter are arranged to shut against said shoulders.

Cross-Q. 32. Are you willing to state that the defendants have been deliberately guilty of piracy in making the constructions which you claim contain the alleged invention of complainant's patent here in suit?

(Objected to, as far as deliberation is concerned, as not cross-examination.)

A. I suppose I have no right to decide, and do not pretend to decide, that question. I have seen the term used under similar cir-

cumstances, in various decisions of the courts, and simply use it as a quotation.

Cross-Q. 33. And, so far as you can tell, the defendants, if they have committed any infringement, may have done so merely accidentally; is that not so?

(Objected to as immaterial.)

A. Oh, certainly; so far as I know.

Csoss-examination closed.

Redirect examination:

Redirect Q. 34. Assuming that the central portion of the infringing lock resembles the Bernheim lock, if both end caps of the Bernheim lock were immovable and one end serving as an abutment for the spring are or are not, in your opinion, the end blocks of the infringing locks additions which the Bernheim lock does not suggest?

99 A. They certainly are, in my opinion, and that whether both ends are immovable or not.

(Question and answer objected to as immaterial.)

Redirect closed.
Examination closed.

OLIVER DRAKE.

Subscribed and sworn to before me this 14th day of February, 1885.

SAM'L R. BETTS,
U. S. Comm'r, S. D. of N. Y.

Adjourned to Tuesday, February 24, at 12 m.

NEW YORK, TUESDAY, *February* 24, 1885—12 m.

Present: Counsel as before:

WILLIAM ROEMER, the complainant, being called and first duly sworn, deposes and says:

My name is William Roemer. I am 47 years of age. I reside at 269 Broome street, Newark, N. J., and am by occupation a manufacturer of traveling bags and trimmings for the trunk and bag trade. I am the patentee of letters patent No. 208,541, being the patent upon which this suit is brought.

Q. 1. When did you make the invention which is described in said letters patent?

(Objected to as being improper in rebuttal, it being an evident attempt to carry the alleged invention back prior to the date of the references brought out in defendants' testimony, and such testimony ought to have been put in the *prima facie* case.)

Counsel for complainant, although he does not admit the sufficiency of the objection, withdraws the question, inasmuch as it is

already answered in Complainant's Exhibit Headley Record,
100 which was offered in evidence, without objection, during the introduction of the complainant's *prima facie* evidence.

Defendants' counsel calls attention to the fact that the parties in said Headley record do not include the defendants in this suit; that the defendants in this suit were in no way privy to said Headley suit, and are not bound by anything brought out in said Headley record.

Counsel for complainant replies that the above statement comes too late, and should have been made a year ago, if the intention is to give it the force of an objection.

Defendants' counsel states that as it is plain on the face of said Headley record that the present defendants in this suit are not therein included, no statement to that effect was necessary.

Q. 2. Are you the same person whose testimony appears under date of December 24, 1881, on page 27 of the printed record marked "Complainant's Exhibit Headley Record?"

A. I am.

Q. 3. Is the testimony there given by you true in every respect?

A. It is.

Q. 4. In that testimony you say that you made the first model of the invention referred to in patent 208,541 in January, 1878. What did you do with that model?

A. I took it to the iron foundry D. A. Meeker & Son, of Newark, New Jersey, and had him make a gate of patterns for moulding the end pieces.

Q. 5. An effort has been made by the defendants to show that your patented lock is not practicable because liable to fall apart while being put on the bag frame. What do you know on that subject?

A. I know that it is as practicable to put the lock onto a frame as any other lock.

Q. 6. Did the alleged impracticability of the lock prevent you from selling locks like "Defendants' Exhibit Roemer Lock Case?"

A. No, sir; I sold them in large quantities to the trade. I sold them mostly off the frame; I sold some on the frames.

Q. 7. Can you name some of the more prominent parties
101 in the trade to whom you sold these patented locks?

A. I sold them to T. B. Peddie & Co., William O. Headley & Son, William Heller, J. Koch, Edgar Farmer & Co., and some others.

Q. 8. State whether or not George B. Jenkinson and Charles Küpper, both witnesses for the defense in this case, had bought of you these patented locks.

A. George B. Jenkinson bought them of me personally in large quantities. Charles Küpper bought them of me indirectly. They were charged to William O. Headley, who sold them to Küpper. Küpper then put the lock on his frames and sold the frames to Headley.

Q. 9. Whether or not you saw Küpper put these locks on frames.

A. I did; and I often delivered the locks to Küpper.

Q. 10. Did you or not, after having delivered your patented locks to George B. Jenkinson and to Charles Küpper, bring suit against them for infringement of letters patent No. 208,541?

(Objected to as immaterial.)

A. I did bring suit against T. B. Peddie & Co., of which firm George B. Jenkinson is a partner. I also brought suit against Headley, but Küpper paid the costs in the Headley suit.

Q. 11. Mr. Jenkinson testifies in answers to questions 54, 55, 56, 57, respecting a certain suit brought by him against you. Please tell us all about that suit.

(Objected to as immaterial and irrelevant.)

A. Mr. Jenkinson sued me for slander for the amount of $10,000 for calling him, as he said in his bill of complaint, a liar and a perjurer. He did it on the strength of my sending a copy of my counsel's brief in the suit, Roemer *v.* Edward Simon *et al.*, to his partner, T. B. Peddie, which is printed on pages 29 and 30 of said brief. The jury brought in a verdict, after they were instructed by the court to read the evidence in said Simon suit, "No cause of action."

102 Counsel for complainant offers in evidence the brief referred to by witness, and the same is marked "Complainant's Exhibit Brief in Simon Suit," S. R. B., U. S. comm'r, Feb. 24, '85.

Q. 12. How was that suit of Roemer *v.* Simon decided?

A. The patent was sustained.

Q. 13. You have had quite a number of suits brought by you against infringers of your patents, have you not?

A. Yes, sir.

Q. 14. State whether or not said George B. Jenkinson was not chronically testifying against you in all or nearly all of these suits.

(Objected to as immaterial.)

A. Yes, he was; I believe he volunteered himself as a witness against me in every suit.

Q. 15. When said Jenkinson first saw the patented lock in question what did he say?

A. He said it was a good thing and gave me a large order, and kept buying of me until R. Neumann & Co. began to infringe upon my lock and until I refused to sell them at a lower figure.

Q. 16. Did he or not ask you to reduce your price for the said patented locks in question?

(Objected to as immaterial.)

A. He did ask me. I said I would not do it.

Q. 17. Do you know John W. Leib, a witness in this cause?

A. I do know him, and have known him for the last twenty years.

Q. 18. Did you have one or more conversations with him before he appeared as a witness or affidavit-maker in this suit respecting the patent in controversy here? And, if yea, tell us what took place during these conversations.

A. I had several conversations with him, and in one of those conversations he had a copy of my patent papers, 208,541, there,
103 which he showed to me. This conversation was in consequence of an invitation of Mr. Jacob Lagowitz to meet him at his factory. There and then Mr. Lieb spoke of several ways by which he could avoid my claim of No. 208,541. He said I can take, for instance, the two handle-holders and rivet them onto to the frame close to the lock, so that nobody will see any difference between that and your patent. I told him then that I had no objection to anything he'd make, as long as it was not my claim. He never mentioned that he ever had made anything like "Defendants' Exhibit Lieb Lock C." That conversation took place about the year 1882—in the summer.

Q. 19. Please tell us when you stopped selling goods to the defendants, R. Neumann & Co.

A. I stopped—I think it was in the year 1883—after Mr. Bernheim swore that I met him in his factory in Newark, and that I agreed there that he could sell a certain lock, which oath was entirely false and untrue, and I would not have anything to do with such folks any more. That oath was made in a suit pending in New Jersey, on another patent.

Defendants' counsel calls attention to the attack made upon the defendant, Mr. Bernheim, herein, which is contained in the words after and including "which oath was entirely false and untrue," and which attack is now made when defendants have no opportunity in this suit to reply to such attack.

Counsel for complainant replies that his only object in asking the question was to fix the time when complainant refused to sell to defendants, and to show that at the same time defendants first began to infringe upon the patent in suit. The remainder of the answer—that is, all that portion thereof which gives the reason of the witness for not selling to defendants—is not responsive to the question, and complainant's counsel is perfectly willing that the same be wholly disregarded in this suit, and therefore moves that the same be stricken out.

Defendants' counsel is not willing that said portion of said answer be disregarded, and objects to the same being stricken out.

104 Q. 20. Are locks like "Exhibit Schloss Lock" or "Bernheim 1875 Lock" in use or in the market, if you know? If not, why not?

A. They are not in the market now, and could not be sold after my patents 195,233 and 208,541 had found their way into the market, because customers wanted a lock and handle-holder combined.

Direct examination closed.

Recess until 1.45 p. m.

Met after recess.

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Q. 19. Please tell us when you stopped selling goods to the defendants, R. Neumann & Co.

A. I stopped—I think it was in the year 1883—after Mr. Bernheim swore that I met him in his factory in Newark, and that I agreed there that he could sell a certain lock, which oath was entirely false and untrue, and I would not have anything to do with such folks any more. That oath was made in a suit pending in New Jersey, on another patent.

Defendants' counsel calls attention to the attack made upon the defendant, Mr. Bernheim, herein, which is contained in the words after and including "which oath was entirely false and untrue," and which attack is now made when defendants have no opportunity in this suit to reply to such attack.

Counsel for complainant replies that his only object in asking the question was to fix the time when complainant refused to sell to defendants, and to show that at the same time defendants first began to infringe upon the patent in suit. The remainder of the answer—that is, all that portion thereof which gives the reason of the witness for not selling to defendants—is not responsive to the question, and complainant's counsel is perfectly willing that the same be wholly disregarded in this suit, and therefore moves that the same be stricken out.

Defendants' counsel is not willing that said portion of said answer be disregarded, and objects to the same being stricken out.

104 Q. 20. Are locks like "Exhibit Schloss Lock" or "Bernheim 1875 Lock" in use or in the market, if you know? If not, why not?

A. They are not in the market now, and could not be sold after my patents 195,233 and 208,541 had found their way into the market, because customers wanted a lock and handle-holder combined.

Direct examination closed.

Recess until 1.45 p. m.

Met after recess.

Cross-examination of the witness ROEMER:

Cross-Q. 21. You do business under the name of Roemer Bros., do you?

A. I do.

Cross-Q. 22. Are you the sole proprietor of that business?

A. I am.

Cross-Q. 23. You have no partners?

A. No, sir.

Cross-Q. 24. The United States letters patent No. 195,233, on which the suit referred to in Complainant's Exhibit Brief in Simon Suit was brought, are the letters patent (Defendants' Exhibit Roemer Patent No. 2), and you are the William Roemer named in said patent 195,233 as patentee; is that so?

A. Yes, sir.

Cross-Q. 25. If, as you say, in Complainant's Exhibit Headley Record you made the alleged invention set forth in patent No. 208,541 in 1876, why did you wait until 1878 without applying for said patent No. 208,541 and in the meantime have issued to you "Defendants' Exhibit Roemer Patent No. 2?"

A. Because I made the invention for the patent 195,233 first, before I made the invention for 208,541, and also for the reason that I was financially rather crippled at that time, having not much money to spare for making applications.

105 Cross-Q. 26. Do you claim that locks like Defendants' Exhibit Roemer Lock Case sell as well and in as large quantities as, for example, locks of the character set forth in patent No. 195,233?

(Objected to as wholly immaterial and not cross-examined.)

A. Yes, sir; they always did. In fact, I sold larger quantities of them than I did of the lock 195,233.

Cross-Q. 27. How do you know that William O. Headley sold locks of the character set forth in patent 208,541 to Küpper?

A. He told me so—I mean William O. Headley told me.

Cross-Q. 28. How do you know that Küpper paid the costs in the Headley suit?

A. Küpper told me that Headley paid the costs and charged it to him and deducted costs from that what Headley owed him.

Cross-Q. 29. Do you mean to state that the lock which you say Lieb described to you, which lock has the two handle-holders riveted onto the frame close to the lock, to be within the scope of your claim?

(Objected to as not cross-examination, the witness not having been called to expound the scope of his claim, and also as the lock to which the question refers is not shown the witness.)

Defendants' counsel calls attention to direct question 8 and the answer of this witness thereto, from which answer defendants' counsel has taken the description of the lock set forth in the last preceding question.

(Complainant's counsel insists upon his objection and requests the witness not to answer the question.)

A. In view of the request of my counsel, I refuse to answer.

Defendants' counsel declines to cross-examine any further.
Cross-examination closed.

106 Redirect examination:

Redirect Q. 30. Why do you do business under the name of Roemer Bros., if you have no partner?

A. After I was put in bankruptcy and before I had my discharge I had to do something for a living, and in order to be able to pay my brothers what I owed them we agreed together that I would do business under the firm style of Roemer Bros. until I would have secured them for all I owed them. Everything belonged to them until I had paid them back what I owed them, and I have paid mostly all back to them.

Redirect Q. 31. In answer to the 18th question you say that Lieb did not mention to you having made anything like Exhibit Lieb Lock C. State whether or not he mentioned to you during any conversation that he had made any device anticipating your patent 208,541.

A. He never said a word that he made anything resembling my patent 208,541.

(Last question and answer objected to as immaterial and as not redirect.)

WILLIAM ROEMER.

Examination closed.

Subscribed and sworn to before me this 24th day of February, 1885.

SAM'L R. BETTS,
U. S. Comm'r, S. D. of N. Y.

WILLIAM ROEMER recalled:

Complainant's counsel says that, in view of the objection to the redirect Q. 31, to the effect that the same was not redirect examination, he has recalled the witness and repeats the question 31.

Redirect Q. 32. (Question 31 repeated to the witness.)

107 A. He never said a word that he made anything resembling my patent 208,541.

(Above question and answer objected to as immaterial.)

Cross-examination waived.

WILLIAM ROEMER.

Examination closed.

Subscribed and sworn to before me this 24th day of February, 1885.

SAM'L R. BETTS,
U. S. Comm'r, S. D. of N. Y.

Adjourned to March 11, '85, at 11 a. m.

NEW YORK, *March* 11—3 p. m.

Met pursuant to adjournment.
Present: Counsel as before.

Counsel for complainant offers in evidence a certified copy from the United States Patent Office of the file wrapper and contents in the matter of the letters patent granted William Roemer, October 1, 1878, No. 208,541, for "improvement in locks for satchels," and the same is marked "Complainant's Exhibit File Wrapper and Contents of Complainant's Patent," S. R. B., U. S. comm'r, M'ch 11, '85.

(Said exhibit and its offer in evidence are objected to as irrelevant and immaterial by defendants' counsel.)

Complainant's case in rebuttal is closed.

108 U. S. Circuit Court, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN and GUSTAV BERNHEIM. } In Equity.

It is hereby stipulated and agreed that the evidence and proceedings thus far taken herein and the pleadings filed herein on the part of the defendant, D. Neumann, shall stand as the evidence, proceedings, and pleadings of the defendant, Gustav Bernheim, and that the defendant, Gustav Bernheim, have twenty days from and after the date hereof to introduce such further evidence and file such further pleadings as he may be advised are material to his defense to said suit.

And it is further stipulated that complainant shall not commence the taking of rebutting testimony until after the expiration of said twenty days, and shall have as much time for introducing rebutting testimony as defendants occupied in taking their proofs.

New York, September 17, 1884.

W. C. HAUFF,
Defendants' Solicitor.
BRIESEN & STEELE,
Complainant's Solicitors.

109 *Oswald's Affidavit.*

UNITED STATES OF AMERICA, *Southern District of New York:*

WILLIAM ROEMER
vs.
DAVID NEUMANN, GUSTAV BERNHEIM, and CARL NEUMANN. } In Equity.

COUNTY OF ESSEX, *State of New Jersey,* } *ss:*

Louis Oswald, of mature age and a resident of Newark, county of Essex and State of New Jersey, deposes and says that he is a manufacturer of traveling bags; that during the month of October, in the year 1883, he has bought locks for bags of R. Neumann & Co., in Washington street, Newark, N. J., of which this lock marked Neumann lock is one.

LOUIS OSWALD.

Subscribed and sworn to this the 5th day of Jan., 1884.
[SEAL.] J. F. KUHN,
Notary Public, N. J.

110 *Drake's Affidavit.*

Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER, Complainant,
against
DAVID NEUMANN, GUSTAV BERNHEIM, and CARL NEUMANN, Def. } In Equity.

SOUTHERN DISTRICT OF NEW YORK, *City and County of New York,* } *ss:*

Oliver Drake, being duly sworn, says: I reside at Newark, New Jersey, and am engaged in the business of soliciting patents, and have been so engaged for about nineteen years last past, and have been accustomed to testify as an expert in patent suits in the United States courts and to examine patent drawings and specifications and to testify in regard to the construction therein shown and set forth.

I have read letters patent granted to William Roemer October 1, 1878, No. 208,541, for satchel locks, and have examined the drawings attached thereto and understand the same, and I have carefully examined, in connection therewith, the lock hereto annexed and marked "Complainant's Exhibit Infringing Lock." The slightest inspection by one accustomed to examine such questions shows that said
111 "infringing lock" infringes the claims of said patent. I find in the "infringing lock" "the end pieces B B of a lock case made with shoulders *d* for defining their position relative to the

body A," and also "the combination of the body A, having open ends, with the end pieces B B, applied thereto," substantially as shown and described in said letters patent.

OLIVER DRAKE.

Subscribed and sworn to before me this 5th day of January, 1884.

CHARLES H. PELL,
[SEAL.] *Notary Public of N. J.*

112 ROEMER *vs.* NEUMANN.

"COMPL'T'S EX. HEADLEY RECORD. S. R. B., U. S. Comm'r. M'ch 19, 1884.

Circuit Court of the United States, District of New Jersey.

WILLIAM ROEMER
vs.
ALBERT O. HEADLEY. } In Equity.

To the honorable the judges of the circuit court of the United States for the third circuit within and for the district of New Jersey:

William Roemer, a citizen of the State of New Jersey and residing in the city of Newark, county of Essex and State of New Jersey, brings this his bill of complaint against Albert O. Headley, of the aforesaid city of Newark, county of Essex and State of New Jersey, doing business under and by the firm name of William O. Headley & Son, as manufacturer of trunks and traveling bags, in said city of Newark and in the city of New York, county and State of New York.

And thereupon your orator complains and says that heretofore and prior to the first day of October, 1878, your orator was the original and first inventor of a new and useful improvement in locks for traveling bags, fully described in the letters patent hereinafter mentioned and referred to, and which said improvement had not been known or used by others prior to his said invention or discovery thereof, nor had it been on sale or in public use by others for more than two years prior to his making appli-
113 cation for a patent for the same; and being so as aforesaid the original and first inventor of the said improvement, and being also a resident of the State of New Jersey, your orator made application in due form of law to the Commissioner of Patents of the United States for letters patent therefor, and that your orator having fully and in all respects complied with all the requirements of the law in that behalf, and especially having made oath that he verily believes himself to be the first and original inventor and discoverer of the said improvement, and that the same had not, to the best of his knowledge and belief, been previously known or used, and having also paid into the Treasury of the United States the sum of thirty-five dollars, the required amount by law provided, and having done all other acts and things required by law to be

done in the premises, the Commissioner of Patents caused letters patent to be made out in the name of the United States of America, in due form of law and bearing date the first day of October, A. D. 1878, and numbered 208,541, which said letters patent are signed by A. Bell, acting Secretary of the Interior, and countersigned by W. W. Doolittle, acting Commissioner of Patents, and sealed with the seal of the Patent Office. Said letters patent grant to and secure to your orator, his executors, administrators, and assigns, for the term of seventeen years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said improvement, a description whereof is given in the words of your orator in the schedule attached to said letters patent and made part of the same, as by reference to said letters patent or a duly authenticated copy thereof, here in court to be produced, will more fully and at large appear.

And your orator further shows unto your honors that he verily believes, and therefore charges the fact to be, that he is the original and first inventor and discoverer of the said improvement in locks for traveling bags described and claimed in said letters patent, and that the same had not been known or used by others before the invention or discovery thereof by him.

114 And your orator further shows unto your honors that since the granting and issuing of said letters patent your orator has made and sold quantities of locks embodying said improvement to the trade, and especially to the defendant, Albert O. Headley, under the firm name William O. Headley & Son.

And your orator further shows unto your honors that at the time of taking out letters patent for said improvement your orator assigned his right, title, and interest in said improvement to Henry and George Roemer, doing business under the firm name of Roemer Bros., at the city of Newark.

And your orator further shows unto your honors that on the twenty-first day of February, 1880, said firm of Roemer Bros. assigned their right, title, and interest in said letters patent to William Roemer, the inventor of said improvement and complainant in this suit, said assignment being duly recorded in the U. S. Patent Office on the second day of March, 1880.

And your orator further shows unto your honors that he is the sole and exclusive owner and holder of the before-recited letters patent and entitled to all the rights and privileges thereby granted and secured or intended to be, and that the said invention is of great utility and value.

But so it is now, may it please your honors, and your orator shows and charges, that the said defendant herein, well knowing the premises, but continually and wrongfully intending to injure your orator and to deprive him of the gains and profits he might and otherwise would have derived from the use and sale of the said invention so patented and granted to him as aforesaid, has manufactured and sold and is still manufacturing and selling, at the city of Newark and at the city of New York and elsewhere in the United States, large quantities of traveling bags having locks attached to them

which embody the same improvement as granted to your orator by said letters patent and as therein fully described and so patented and granted to your orator in and by said letters patent, and, as your orator has reason to believe, he will and intends to continue so to do, and is thereby causing to your orator great and irreparable
115 damage, and refuses to pay to your orator any of the profits he has made by reason of such unlawful use and sale of said invention or to desist from manufacturing, using, and selling the same to others to use, and also in violation of your orator's said rights and privileges under and by said letters patent; all of which acts and things have been in violation and infringement of his said letters patent so granted and secured to your orator as aforesaid and of your orator's exclusive rights under the same.

And your orator further shows unto your honors that the said defendant has connived, contrived, and conspired with others to injure your orator, and is still conniving, contriving, and conspiring with others to injure your orator in his rights and privileges as secured to him and intended to be secured to him in, under, and by said letters patent, by manufacturing, using, and selling to others to use said improvement without your orator's license.

All of which acts and doings aforesaid of the defendant are contrary to equity and good conscience and tend to the manifest injury of your orator in the premises. In consideration whereof and forasmuch as your orator can only have adequate relief in this honorable court, where matters and things of that sort are made cognizable by statute—

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed for, and may, upon his oath and according to his best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the matters and things hereinbefore stated and charged;

And that the said defendant may answer the premises, and that he may be decreed to account with and pay over to your orator the profits which he has realized and received and the damages that have accrued to your orator by reason of such unlawful use and sale of the said invention—

May it please your honors, the premises considered, to grant unto your orator the writ of injunction, issuing out of and under the seal of this honorable court, or issued by one of your honors, according to the form of the statute in such case made and pro-
116 vided, enjoining the said defendant, Albert O. Headley, his agents, servants, and attorneys and workmen, from infringing upon the said letters patent so granted, issued, and secured to your orator as aforesaid by making, using, and selling to others to use the said invention and improvement in locks constructed and made substantially in accordance with and containing and embodying the invention described and claimed in the said letters patent, and also from combining, conniving, and conspiring with others to infringe on the said letters patent by manufacturing, using, and selling to others the said invention in locks, and that your orator

may have such other and further relief in the premises as the nature of the case may require and as to your honors may seem meet.

And may it please your honors to grant unto your orator not only the writ of injunction conformable to the prayer of this bill, but also the writ of *subpœna ad respondendum*, directed to the said defendant and commanding him to be and appear in this honorable court on a certain day, therein to be named, then and there to answer the premises, and to stand to, perform, and abide such further order, direction, or decree as may be made against him.

And your orator as in duty bound, will ever pray.

WILLIAM ROEMER,
Complainant.

Circuit Court of the United States of America, District of New Jersey.

William Roemer, being duly sworn, says that he is the complainant named in the foregoing bill of complaint subscribed by him; that he has read the said bill and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to these matters he believes them to be true.

WILLIAM ROEMER.

Subscribed and sworn to before me this twenty-seventh day of December, 1880.

WILLIAM PATERSON,
U. S. Com'r, Dist. N. J.

117 Henry Raquet, being duly sworn, deposes and says that he resides at the city of Newark, county of Essex, and State of New Jersey; that he has examined the letters patent, dated October the 1st, 1878, numbered 208,541, granted to William Roemer, and fully understands all claims of said letters patent; that he is engaged as traveling agent by the firm of Roemer Bros., of the city of Newark, N. J., selling goods in Western cities; that while so engaged he has seen large quantities of traveling bags having attached to them locks which are identical with and a direct infringement upon the above-named letters patent, at different places, and especially at the store of Martin Maier, in the city of Detroit, Mich., which bags were bought of the firm of Wm. O. Headley & Son, as subscriber was informed by said Martin Maier and as he knows of his own knowledge; and he further says that he knows the work of all different manufactories in traveling bags in the United States.

H. RAQUET.

Sworn and subscribed to before me this twenty-seventh day of December, 1880.

WILLIAM PATERSON,
U. S. Com'r, Dist. N. J.

A true copy.
[SEAL.] S. D. OLIPHANT, *Clerk.*

118 Circuit Court of the United States, District of New Jersey.

WILLIAM ROEMER
vs.
ALBERT O. HEADLEY. } In Equity.

Answer.

The answer of Albert O. Headley, defendant, to the bill of complaint of William Roemer, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors, uncertainties, and imperfections in the said bill of complaint contained, for answer thereunto or unto so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says that he has no knowledge as to whether prior to the first day of October, eighteen hundred and seventy-eight, the complainant was the original and first inventor of the alleged improvement in locks for traveling bags mentioned in the said bill, and leaves the said complainant to make such proof thereof as he may be advised is necessary for him to do.

That he believes it to be true and therefore admits that the letters patent of the United States, dated October first, eighteen hundred and seventy-eight (and numbered two hundred and eight thousand five hundred and forty-one), mentioned in the said bill, were granted and issued to the said complainant; but this defendant denies that the said alleged improvement had not been known or used by others before the issuing of the said letters patent and before the said alleged invention and discovery thereof by him.

119 That this defendant believes it to be true that the said complainant has made and sold large quantities of locks embodying his said alleged improvement to the trade and to this defendant, the said complainant being a manufacturer of locks and this defendant a manufacturer of trunks and bags.

That this defendant has no knowledge as to the assignment of the said letters patent by the complainant to Henry and George Roemer nor the reassignment by them to the complainant, as set forth in said bill, nor whether he is the exclusive owner thereof or whether the said invention is of any utility or value, and leaves the complainant to make such proof thereof as he may deem necessary.

And this defendant, further answering, denies that he has ever manufactured or sold in the city of Newark or elsewhere any traveling bags having locks attached to them which embody the alleged improvement described in the said letters patent, except such bags as may have attached to them locks bought by this defendant from the said complainant himself; that he has in any manner violated or infringed the rights of the complainant under said letters patent.

And this defendant, further answering, says that he is informed and believes that the said William Roemer was not the original and

first inventor of the improvements attempted to be claimed in said letters patent (numbered two hundred and eight thousand five hundred and forty-one), and he avers that locks for traveling bags, as described in said patent, or substantial and material parts thereof, claimed as new before the alleged invention thereof by the said William Roemer, were in public and common use in this country and in particular were known and used by the following-named persons, viz:

Charles Kupper, who resides in the city of Newark, N. J., doing business at No. 17 Mulberry street; Carl Neumann, of No. 7 Washington street, Newark, N. J., and Reinhard Schmidt, of 119 Mulberry street, Newark, N. J.

120 And this defendant, further answering, says, upon information and belief, that the improvements contained in said letters patent No. 208,541, mentioned in the complainant's bill or substantial or material parts thereof claimed as new before the alleged invention thereof by said William Roemer, were patented, described, and claimed and shown in the following letters patent of the United States, viz: In letters patent granted to the said William Roemer May 15, 1877, and numbered 190,907; in letters patent of the United States granted to William Simon May 2, 1876, and numbered 177,020; in letters patent of the United States granted to said William Roemer September eighteenth, eighteen hundred and seventy-seven, and numbered 195,233, and in letters patent of the United States granted to Abram Oberndorfer August twenty-eight, eighteen hundred and seventy-seven, and numbered 194,715.

And this defendant, further answering, says the alleged improvements mentioned in said letters patent did not require any invention, and were not the proper subject-matter of letters patent, but were mere modifications of locks long ago in use which would readily be suggested to a mechanic of ordinary skill, and that the said letters patent are wholly void, both for want of novelty and want of invention, and that the complainant is not entitled to any decree declaring said patent valid nor for any account or injunction, as prayed for in said bill of complaint.

And this defendant denies that any other cause or thing in said complainant's bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, to be true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

A. Q. KEASBEY & SONS,
Sol's and of Counsel with Defendant.

121 UNITED STATES OF AMERICA, } ss:
District of New Jersey, }

Albert O. Headley, being duly sworn, deposes and says that he has read the foregoing answer, and that the same is true as far as

118 Circuit Court of the United States, District of New Jersey.

WILLIAM ROEMER
vs.
ALBERT O. HEADLEY. } In Equity.

Answer.

The answer of Albert O. Headley, defendant, to the bill of complaint of William Roemer, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors, uncertainties, and imperfections in the said bill of complaint contained, for answer thereunto or unto so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says that he has no knowledge as to whether prior to the first day of October, eighteen hundred and seventy-eight, the complainant was the original and first inventor of the alleged improvement in locks for traveling bags mentioned in the said bill, and leaves the said complainant to make such proof thereof as he may be advised is necessary for him to do.

That he believes it to be true and therefore admits that the letters patent of the United States, dated October first, eighteen hundred and seventy-eight (and numbered two hundred and eight thousand five hundred and forty-one), mentioned in the said bill, were granted and issued to the said complainant; but this defendant denies that the said alleged improvement had not been known or used by others before the issuing of the said letters patent and before the said alleged invention and discovery thereof by him.

119 That this defendant believes it to be true that the said complainant has made and sold large quantities of locks embodying his said alleged improvement to the trade and to this defendant, the said complainant being a manufacturer of locks and this defendant a manufacturer of trunks and bags.

That this defendant has no knowledge as to the assignment of the said letters patent by the complainant to Henry and George Roemer nor the reassignment by them to the complainant, as set forth in said bill, nor whether he is the exclusive owner thereof or whether the said invention is of any utility or value, and leaves the complainant to make such proof thereof as he may deem necessary.

And this defendant, further answering, denies that he has ever manufactured or sold in the city of Newark or elsewhere any traveling bags having locks attached to them which embody the alleged improvement described in the said letters patent, except such bags as may have attached to them locks bought by this defendant from the said complainant himself; that he has in any manner violated or infringed the rights of the complainant under said letters patent.

And this defendant, further answering, says that he is informed and believes that the said William Roemer was not the original and

first inventor of the improvements attempted to be claimed in said letters patent (numbered two hundred and eight thousand five hundred and forty-one), and he avers that locks for traveling bags, as described in said patent, or substantial and material parts thereof, claimed as new before the alleged invention thereof by the said William Roemer, were in public and common use in this country and in particular were known and used by the following-named persons, viz:

Charles Kupper, who resides in the city of Newark, N. J., doing business at No. 17 Mulberry street; Carl Neumann, of No. 7 Washington street, Newark, N. J., and Reinhard Schmidt, of 119 Mulberry street, Newark, N. J.

And this defendant, further answering, says, upon information and belief, that the improvements contained in said letters patent No. 208,541, mentioned in the complainant's bill or substantial or material parts thereof claimed as new before the alleged invention thereof by said William Roemer, were patented, described, and claimed and shown in the following letters patent of the United States, viz: In letters patent granted to the said William Roemer May 15, 1877, and numbered 190,907; in letters patent of the United States granted to William Simon May 2, 1876, and numbered 177,020; in letters patent of the United States granted to said William Roemer September eighteenth, eighteen hundred and seventy-seven, and numbered 195,233, and in letters patent of the United States granted to Abram Oberndorfer August twenty-eight, eighteen hundred and seventy-seven, and numbered 194,715.

120

And this defendant, further answering, says the alleged improvements mentioned in said letters patent did not require any invention, and were not the proper subject-matter of letters patent, but were mere modifications of locks long ago in use which would readily be suggested to a mechanic of ordinary skill, and that the said letters patent are wholly void, both for want of novelty and want of invention, and that the complainant is not entitled to any decree declaring said patent valid nor for any account or injunction, as prayed for in said bill of complaint.

And this defendant denies that any other cause or thing in said complainant's bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, to be true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

A. Q. KEASBEY & SONS,
Sol's and of Counsel with Defendant.

121 UNITED STATES OF AMERICA, } ss:
District of New Jersey, }

Albert O. Headley, being duly sworn, deposes and says that he has read the foregoing answer, and that the same is true as far as

the same relates to his own acts and deeds, and as to the acts and deeds of others he believes it to be true.

A. O. HEADLEY.

Sworn and subscribed this — day of March, A. D. 1881, before me—

E. N. MILLER,
U. S. Commissioner, District of New Jersey.

Replication.

Replication duly filed in usual form.

Circuit Court of the United States, District of New Jersey.

WILLIAM ROEMER
vs.
ALBERT O. HEADLEY. } On Bill, &c.

Complainant's proofs.

Examination of witnesses, etc., taken before me, at my office, in the city of Newark, on Wednesday, the 13th day of April, 1881, in the above-stated cause, in presence of F. C. Lowthorp, Jr., of counsel with the complainant, and A. Q. Keasbey, of counsel with the defendant, by agreement and consent of parties and on the part of the complainant.

WILLIAM PATERSON,
United States Commissioner.

122 DISTRICT OF NEW JERSEY, *ss:*

WILLIAM ROEMER, sworn, deposes and says: I am complainant and reside in Newark. I am the patentee of the invention in controversy. The letters patent of U. S., No. 208,541, shown me were granted to Roemer Bros. They are dated October 1, 1878, and signed by A. Bell, acting Secretary of Interior, and by the acting Commissioner of Patents. The paper now shown me is an assignment of those letters patent to me by Roemer Bros.

Counsel for complainant offers in evidence said assignment, signed by Henry and George Roemer, the assigns of the patentee, recorded in the Patent Office, 2d March, 1880, in Book Z 24 of Assignments, on page 325.

It is agreed that a certified copy of the letters patent and of the assignment may be put in evidence as Exhibits A and B for complainant.

Also an assignment of William Roemer to the firm of Roemer Bros. of the letters patent above designated, recorded in Book Lib. G 23 of Assignments, on page 300, marked as Exhibit C for complainant.

I am engaged in the manufacture of locks and lock cases under these letters patent. There is a very large demand for them. Hardly

any traveling bags can be sold without having on them locks similar to those under my patent.

It is agreed that this witness may be examined at further time.

WILLIAM ROEMER.

WM. PATERSON,
U. S. Commissioner.

DISTRICT OF NEW JERSEY, *ss:*

CHARLES SCHMUHL, sworn, says: I live in Newark, and am engaged in the manufacture of locks for traveling bags and have been for ten years steadily. I am acquainted with the lock described in letters patent. I have read the specifications and claim of
123 the letters patent in this suit. Before that patent was issued I never saw any locks of the kind for which this patent was issued. They are being manufactured in great quantities now.

Exhibit D for complainant, a traveling bag with a lock, being shown witness he says:

The box is an open box—I mean the box of the lock case is open at the ends. It is U-shaped, like that described in the patent.

Q. 1. Are there any end pieces in this lock before you with shoulders or offsets fitting into the case or box and used for closing the ends of the case or for any other purpose?

A. Yes.

Q. 2. For what other purpose besides closing the ends of the case?

A. The purpose is to hold the ring for the handle and make a joint so that the lock is complete.

Q. 3. How are the end pieces fastened to the frame and the case?

A. By a rivet going through the end pieces and the lock.

Q. 4. As a person familiar with the construction and characteristics of locks used on traveling bags, would you or not consider the lock before you similar, substantially, in construction and operation to the lock described in the specifications of the patent in this suit?

(Objection, as the witness has not been shown to be an expert.)

A. Yes.

Q. 5. Did you purchase Exhibit D?

A. I did.

Q. Where?

A. At store of Wm. O. Headley & Son, on Broadway, in New York city.

Q. 6. Do you know whose store that is really?

A. Yes; it is that of Wm. O. Headley and his son Albert, the defendant in this suit.

Q. 7. Did you see other locks of the same kind in the store?

124 A. I did; some dozen standing before me. They were exposed for sale. A lock could be made from the specifications in the patent by any skilled mechanic without other information.

It is agreed that this witness shall be recalled, and the examina-

tion here is adjourned to a future day to be agreed upon by the respective counsel.

CHARLES SCHMUHL.

Subscribed 2d May, 1881, before me—

WM. PATERSON,
U. S. Commissioner.

MONDAY, 2*d May*, 1881.

This examination was continued, by agreement, at this date.

It is admitted that the defendant now is conducting the business alone under the firm name.

Counsel for defendant states that he will not cross-examine William Roemer.

CHARLES SCHMUHL, being cross-examined, says: I have worked for Roemer since 1st Nov., 1879; before that I worked for Simon Bros. I have not been examined as a witness before. I can read English. I am a German by birth. I have read the patent of Mr. Roemer, No. 208,541. I think I can tell his claim. My idea of the claim in his patent is that Roemer's lock case is open on the end, and so is that of Headley.

Cross-Q. 8. State your understanding or idea of the value of Mr. Roemer's patent in this matter. What do you think he claims?

A. That the lock case is open on the ends—joins with the blocks on the ends; that the rings of the handles are connected together with the lock.

125 By Mr. LOWTHORP:

Redirect Q. 9. What do you understand to be the chief advantage in this method of constructing locks, then, in patent of Roemer?

A. That the handle is joined together with the lock; it needs no extra work to fasten the handles on the bag.

Redirect Q. 10. Is there or not any gain in the matter of expense in constructing the box with open ends?

A. I should think not.

Redirect Q. 11. What I mean is, does it cost as much to make the box with open ends as it does with the ends closed, as was the method formerly of making them?

A. I guess not.

CHAS. SCHMUHL.

Sworn and subscribed this 2d May, 1881, before me—

WM. PATERSON,
U. S. Commissioner.

Circuit Court of the United States, District of New Jersey.

WILLIAM ROEMER
vs.
ALBERT O. HEADLEY. } On Bill, &c.

Defendant's Proofs.

Examination of witnesses, etc., taken before me, at my office, in the city of Newark, as stated hereinafter, in the above-stated cause, in presence of F. C. Lowthorp, of counsel with complainant, and E. Q. Keasbey, with the defendant, by agreement and consent of parties, on the part of defendant.

WILLIAM PATERSON,
U. S. Com. and Examiner.

126 DISTRICT OF NEW JERSEY, *ss:*

H. A. WEST, sworn for defendant, says: My profession is that of patent solicitor. I am now a patent specification writer with Munn & Co., of "The Scientific American," in New York. I was an examiner for nearly five years in the Patent Office at Washington. My position in the Patent Office gave me a very wide experience, and since my experience at Munn & Co.'s has been considerable. It has been my custom to compare inventions with reference to patentability almost continually for the last seven years. I have had occasion to examine the patents of locks for satchels and compare the locks. I have examined the records in regard to them. I am familiar with the records of the Patent Office in making these examinations.

Counsel for defendant produces two locks, marked Exhibits D 1 and D 2, and asked the witness to examine and compare them and state the difference and similarity.

Witness says: D 1 is composed of two parts, a lock case made of sheet metal and a bed plate, while D 2 is composed of three parts, a lock case of sheet metal and of two plugs or stoppers, without a bed plate. The lock case of D 1 is sloping or beveled at the ends, that of D 2 is straight at the ends.

Q. 1. State the difference between Exhibit D 1 and this lock now offered as Exhibit D 3 for defendant.

A. D 3 as compared with D 1 shows very little difference, mainly in width of the bed plate, the lock cases being identical, excepting that the side pieces of the lock case of D 1 extend over the sides of the bed plate; there is no functional difference.

Q. 2. Comparing D 2 with D 3, what is the relation between them?

A. D 2 dispenses with the sloping ends of the lock case and also with the bed plate, which are shown in Exhibit D 3.

Q. 3. Wherein does the advantage or improvement, if any, lie?

A. It makes a cheaper lock, in that it is expedient to make the lock case of D 2 of poorer quality of material—requires less expensive machinery to make it and less power and less metal.

Q. 4. Can or not the same be said with reference to D 1 when the two are compared—that is, D 1 and D 3 ?

127 A. No; the D 1 lock retains the bed plate and sloping ends of the lock case.

Q. 5. Claim No. 2 of the patent sued on in this suit speaks of shoulders; do you find any similar shoulders on D 1?

A. The word "shoulders" in the claim is a misnomer; the parts referred to, properly, are stops; their function is that of stops; I find no parts in D 1 that have similar functions.

Q. 6. Compare the features of D 3 with D 1 with reference to the mode in which it is attached to the bed plate.

A. For the purpose of making a good joint between the lock case and the bed plate of D 3 the bed plate is formed with shoulders on the top; shoulders are formed on the bed plate of D 1 for a similar purpose.

Q. 7. You will notice the ends of the case in D 1 are open; is or is not that a point of advantage over the case of D 3 in construction?

A. Yes; as I said, it is expedient to make it of less expensive material, requires less expensive machinery, and less power.

Q. 8. Referring to D 4, compare that to D 2; is there any similarity?

A. It belongs to a different class of locks; I mean D 4, now shown me. The lock case is straight at the ends and closed, not by plugs which have stops on them, as in D 2, but the ends are closed with sheet-metal laps that are integral with the lock case; the laps do not hold the handle rings, as in D 2; the lock cases, however, are similar. Claim 2 of Patent Exhibit A for complainant does not specifically point out that the plugs do or may hold the handle rings.

Q. 9. Could either of the parts of D 1 be substituted for any of those of No. 2 and retain the advantages gained by Mr. Roemer in the use of No. 2?

A. No.

Q. 10. What relation does Exhibit D 5 for defendant, now shown you, bear to Exhibit D 2?

A. There is no similarity, except that the lock case in D 5 is straight on the top and open at the ends, the same as in D 2; D 5 seems to be incomplete about the lock mechanism; the ends of the case are closed by blocks formed on the end of a piece which slides under the lock case. I never saw the exhibit before and cannot state where or in what manner it is placed upon the bag, nor

128 do I see that it is operated with a key; at all events, the exhibit shows an open-end case, straight at the ends, adapted to enclose moulded mechanism of some kind. I cannot state that both ends of the case are to be closed with internal blocks, owing to the apparent imperfection of the exhibit,

(Counsel for complainant objects to the introduction of Exhibit D 5 on the ground that it is imperfect and incomplete, and that the

witness is unable in any way to identify or describe it or show its connection with bag locks of any description.)

Q. 11. Can you identify the exhibits or tell under what several patents they are used or under what names they are known?

A. Exhibit D 2 is shown in the drawings of patent No. 208,541, granted to William Roemer 1st October, 1878; Exhibit D 3 is not patented, to my knowledge, nor is Exhibit D 1 or Exhibit D 4.

Q. 12. Compare Exhibit D 1 with Exhibit D for complainant.

A. The locks are identical, that in D being shown in place on the bag frame, the lock of Exhibit D 1 being loose, not connected with the frame, nor the case and bed plate connected as in Exhibit D.

Q. 13. Does Exhibit D 1 use the same device as D 2?

A. No; they are not equivalent to each other, in view of D 3, D 4, and D 5.

(Counsel for complainant objects to all of this answer as irresponsponsive, except the first.)

Q. 14. Are they equivalent to each other, in view of D 3 and D 4?

A. They are not; Exhibit D 1 being the equivalent of D 3, or a slight modification, such as the manufacturer may make, notwithstanding any patent, the difference between the two not amounting to invention.

(Last answer objected to as stating a principle of law.)

Q. 15. Is the extension of the lock case over the sides of
129 the bed plate an important modification of D 3, in reference to the point in controversy?

(Objection as irrelevant.)

A. Yes, sir; there is some advantage in that. It will not be expedient to japan or paint the bed plate without such construction of the case, which, I suppose, is a cheaper finish than plating. Still, the advantage seems to be very slight, and the extension of the sides of the lock case makes a handsome lock, since it shows no side joints, and the filling is easier.

Q. 16. Does it change the character of the elements of which it is composed?

A. As I stated before, there is no functional difference between D 1 and D 3. The same difficulties experienced in making the lock case of D 3 obtain in making that of D 1.

Q. 17. Is there a bed plate in each?

A. Yes; each exhibit shows a continuous bed plate.

Q. 18. Before the time of the patent of complainant did there exist lock cases with open ends; and, if so, what were they? Recapitulate briefly.

(Objection as leading.)

A. I know of no lock before the date of that patent, the lock case

of which is open at the ends, excepting such locks as D 4 represents.

Q. 19. What other forms were there of forms of lock cases with reference to the ends and connection with the rings, the bed plate, or ring-holder?

A. Roemer's patent No. 190,907, granted 15th May, 1877, shows a lock case provided with means for holding the ends of the handle without a bed plate and without separate lock case. His patent 195,223, 18th September, 1877, shows a lock of similar construction without a bed plate and provided with means for holding the handle rings, and the patent to William Simon, No. 177,020, 2d May, 1876, shows a lock, the bed plate of which is formed with a depression or loop, the depression being from the under side, for holding
130 rings or other suitable devices, the lock case being secured at the top of the bed plate and closed at the ends.

This answer objected to as irrelevant and incompetent unless the letters patent referred to therein are filed as exhibits.

Counsel for defendant offers in evidence the drawings and specification of letters patent of the United States, No. 177,020, W. Simon, improvement in traveling bags, dated 2d May, 1876, marked as Exhibit D 6; also printed copy of the drawings and specifications of letters patent of the United States, No. 190,907, issued to William Roemer for locks for satchels, 15th May, 1877, marked as Exhibit D 7 for said defendant; also the same, No. 195,233, issued to same, for combined lock and handle for traveling bags, 18th September, 1877, marked as Exhibit D 8 for said Headley.

Q. 20. In view of these and the state of the art at the time of the invention by Roemer, can you state what is the main idea or purpose of that invention as shown by his letters patent and Exhibit D 2?

A. By the construction shown and described in the patent of Mr. Roemer he seeks to improve the character of locks shown by D 3. The extent of the improvement is marked in the fact that he dispenses with a bed plate and with the sloping ends of the lock case, thereby making a cheaper lock.

Q. 21. Is it an improvement in any other respect?

A. I discern no other features of improvement.

Q. Is there any other purpose than reduction of expense?

A. I should say not.

By Mr. LOWTHORP:

When I am compelled to sign my full name I write it H. Albertus West. I live in New York city, and am now with Munn & Co. I was third assistant examiner in the Patent Office for four years and eleven months previous to 1st November, 1879.

131 Cross-Q. 22. You identify in your testimony Exhibit D 2 with the invention patented in Exhibit A, do you not?

A. Yes, sir.

Cross-Q. 23. State whether or not, in your opinion, the end pieces *b b*

in claim 1 of said letters patent must be of any specific length or vertical depth within the lock case.

A. In order to be applied to the end of the lock case these have to be of a specific length; in order to be used with a straight lock case they have to be of the same height; but, broadly stated, the plugs need not be of any specific vertical depth, the depth being governed by the construction of the case.

Cross-Q. 24. Suppose the vertical depth of the lock case—that is, the distance from the underside of the upper part of the case to the top of the jaw of the bag frame—were half an inch, might not that part of the metallic end which is within the lock case be less than half an inch in depth?

A. Not to make a good joint.

Cross-Q. 25. I refer now to its vertical depth of what you call the "plug?"

A. That is my answer.

Cross-Q. 26. Why would it not make a good joint?

A. Because, as I understand your question, the lock case would be below the upper edge of the plug.

Cross-Q. 27. When you say the upper edge of the plug what do you mean?

A. The top of it.

Cross-Q. 28. The top of the inside of the case. I am not speaking now of these shoulders.

A. The way you state the question they would not come together to make a joint—to make a lock.

Cross-Q. 29. Supposing the shoulders, and in fact the whole plug as is shown in Exhibit D 2, were changed by the addition of a projected arm on the inner end of the plug, but half of its vertical depth, running a distance say of half an inch to an inch in a straight line, with the bottom of the plug toward the middle of the lock, would that make any substantial difference in the plug or the lock?

132 A. If you did not extend it so far as to interfere with the lock mechanism it would make no difference, except the additional material for the same; it would make a more expensive lock.

Cross-Q. 30. Supposing this Exhibit D 2, could not such an arm of the thickness of $\frac{1}{16}$ to say $\frac{1}{8}$ of an inch be extended to the middle of the lock case without making any substantial change in the case or in the plugs?

A. It makes a change of additional material; that is all.

Cross-Q. 31. Taking Exhibit D 1—suppose this bed plate were to be fractured in the middle and placed within the lock case and upon the jaw of the bag, would there be any substantial difference between that and Exhibit D 2?

A. The case you suppose would ruin the lock of Exhibit D 1; the ends would be free to move lengthwise under the lock case.

Counsel offers a lock having open ends with the base plate fractured in the middle, and asks that it be marked for identification by the master and examiner Exhibit X.

Cross-Q. 32. Witness is shown the base plate of Exhibit D 1 and the fractured base plate of the lock marked for identification and asked: Please state the difference between these base plates except in the fracture of Exhibit X.

A. Exhibit X has rivet holes which surround the rivet, while in the bed plate of Exhibit D 1 the holes are open.

Cross-Q. 33. Now suppose this question: The rivet holes in base plate D 1 at the ends were similar to the rivet holes at the ends of the base plate of X, and the base plate of D 1 was fractured in the middle, would that base plate D 1 be substantially different from the end pieces of D 2?

A. Yes; they could not be applied to the end of the lock case, and it would not make a practical lock.

Cross-Q. 34. Why would it not make a practical lock?

A. As I said before, they could not be applied to the end of the lock case, and it would weaken the lock, this broken part of the bed plate being free to move vertically and laterally.

Cross-Q. 35. Now, why could they not be applied to the end of the lock case?

133 A. Because they would not pass the rivet.

Cross-Q. 36. What rivet is that?

A. The one that goes through the rivet hole at the ends of the lock case.

Cross-Q. 37. Do you assume that the lock case is riveted onto the jaw of the bag before the end pieces are attached to the lock case?

A. The lock case and bed plates are applied simultaneously.

Cross-Q. 38. They are applied simultaneously?

A. Yes, sir.

Cross-Q. 39. When is the rivet at the end passed in?

A. At the time the parts are secured to the bag frame, I suppose.

Cross-Q. 40. Do you suppose that in base plate Exhibit X the rivets at the ends pass through both the case and the base plate?

A. Yes; and thus leave the inner ends of the broken plate free to move vertically, and, perhaps, interfere with the movement of the lock mechanism.

Cross-Q. 41. Then you find that the rivet passes through both the case and the base plate? You also state that you suppose the base plate and case are applied simultaneously.

A. They may be.

Cross-Q. 42. Is that rivet passed in after both the base plate and the case are applied to the edge of the bag?

A. They may be.

Cross-Q. 43. Can it be done in any other way?

A. No.

Cross-Q. 44. Then must it not be passed in after both the base plate and case are applied to the edge of the bag?

A. No.

Cross-Q. 45. Why not?

A. Because the rivet may be put in, and thus the rivet and the whole put on together.

Cross-Q. 46. Suppose the rivet to be placed into position first and the base plate and lock case placed upon it simultaneously the rivet is headed after they are so placed, is it not?

A. I suppose so.

134 Cross-Q. 47. Is there any other way of doing it?

A. No.

Cross-Q. 48. There is not?

A. No.

Cross-Q. 49. Then, in view of this statement, how can you say that the base plate X could not be passed in into the lock case?

A. I have not said so—I don't think I said so.

Cross-Q. 50. You admit, then, that the base plate X with the fracture in the middle might be used in the lock case with open ends?

A. I don't state it in that way. It would ruin the lock.

Cross-Q. 51. I asked you whether it could not be used so?

A. Yes; it could be used so.

Cross-Q. 52. You said before that base plate X having a fracture in the middle would have a vertical motion within the lock case when attached to the jaw of the bag?

A. It is free to have such a motion.

Cross-Q. 53. Will you state why it is free to have such a motion?

A. Because it is broken.

Cross-Q. 54. Why, when the lock case is fastened firm to the jaw of the bag what possible motion can it have?

A. Turn the bag upside down and doubtless the broken ends would rise vertically or drop down into the lock case.

Cross-Q. 55. You observe that the base plate X when within the lock case of Exhibit D 1 has extended beyond the open ends of the case two riveted jaws or hooks, one on each end, which come down by their curve to the same line, or to the plane of the bottom of the base plate, do you not?

A. Yes.

Cross-Q. 56. Do you not also observe that the ends or shoulders on that base plate are confined at the top by the bevel ends of the lock case?

A. No.

Cross-Q. 57. You do not?

A. No.

135 Cross-Q. 58. What I mean is this: Are they not practically prevented from rising when within the case or under the case, and the case is fastened firmly to the jaw of the bag?

A. Well, as I stated before, they are free to move. I answer that the inner ends of the broken plate are free to move vertically under the lock case when the lock case and the bed plate so broken are secured on the bag frame; this, however, would depend upon the width of the sides of the lock case; if the edges of the lock case rise upon the bag frame the broken parts of the bed plate would be free to move under the lock case.

Cross-Q. 59. You have stated that the hook or jaw of the outer end of the base plate is brought down to a point on a line with the

bottom of the base plate. Supposing now that this fractured plate were laid upon the jaw of the bag and firmly riveted within the lock case, the end of which is brought down to the neck of the jaw on the inner end, would it be possible for that jaw to move down any further towards the jaw of the bag when the bag was upset?

A. The bed plate, resting upon the jaw of the bag, of course could not move any further towards the jaw of the bag to the point of contact without bending the jaw of the bag.

Cross-Q. 60. Then you admit that it would be impossible for the jaw or loop on the end of the base plate to move any further down on the end of the jaw of the bag than it was when riveted?

A. If you mean that the broken part of bed plate when riveted fast to the bag frame can move towards the bag frame, I don't admit that at all.

Cross-Q. 61. You don't admit that it can move any further towards the bag frame?

A. Certainly not; it cannot move beyond its support.

Cross-Q. 62. The base plate being a solid piece of metal at the end of the loop and it being impossible under the circumstances stated in the last question and answer for the loop to move nearer to the jaw of the bag, will it not be equally impossible for the fractured end inside the lock case to move away from the jaw of the bag without a bend or fracture of the piece?

136 A. As I have before stated, that depends upon the relative thickness of the bed plate with the side flanges of the lock case; now, suppose if the lock case and the fractured bed plate in the middle are made and fitted to each other and fastened to the jaw of the bag in a workmanlike manner, as above described, would it be possible for the fractured end to rise from the jaw of the bag or interfere with the lock? It would not be possible.

Cross-Q. 63. Would there be any substantial difference then between Exhibit D 2 with the plugs, as you call them, extending inwardly so as to meet under the middle of the lock without interfering with its mechanism and the base plate X within the lock case of Exhibit D 1?

A. Yes.

Cross-Q. 64. What is it?

A. The lock case of D 1 is beveled on each end, while the lock case of D 2 is not beveled; a lock case beveled on each end is more expensive of construction than one that is not.

Cross-Q. 65. You then confine the difference entirely to the beveling of the ends of the lock case, do you?

A. No, sir.

Cross-Q. 66. What other differences are there?

A. As I stated in my direct examination, the lock of D 1 has no plugs, while that of D 2 has two plugs; the lock of Exhibit D 1 has a continuous bed plate, while the lock of D 2 has no bed plate.

Cross-Q. 67. Question repeated.

A. I have just stated my answer to that; I repeat the answer.

Cross-Q. 68. Have you no further answer to make to this question?

(Question 66 repeated.)

A. I have answered your question as I understand it and as I understand the construction of the locks referred to, namely, Exhibits D 2 and D 1.

Examination adjourned to Saturday, October 29, 1881, at 3 p. m.

137 OCTOBER 29, 1881.

Present: Mr. Lowthorp and Mr. Clayton.

Adjourned to November 5, 1881.

NOVEMBER 5, 1881.

Present: F. C. Lowthorp and J. C. Clayton.

DISTRICT OF NEW JERSEY, *ss:*

CHARLES KUPPER, being sworn for defendant, deposes and says:

Counsel for defendant offers in evidence United States letters patent No. 194,715, dated 28th August, 1877, granted to Abram Oferndoffer for improvements for locks for valises, which is marked Exhibit D 6 for defendant.

It is agreed by the respective parties that official printed copies of the various patents offered in evidence may be used and certification thereof is waived.

My name is Charles Kupper; age, 47 years; reside in Newark at 45 Mercer street, and a manufacturer of bag frames and locks. I have made locks like Exhibit D 3; I made that one. I made and sold them to A. O. Headley, the defendant. I have a book with me in which are the memoranda of the first sale of locks shown in Exhibit D. 3.

Witness reads from the book this memorandum:

"W. O. Headley & Son, 1878, March 31, 5 doz. No. 4 lock—nickel lock, $3.00—$15.00."

I wrote that memorandum on that date; that entry refers to locks like Exhibit D 3; that was the first sale of locks of this kind to Mr. Headley.

138 Q. 1. When did you first make a lock like this lock, Exhibit D 3?

A. I made it this time, in 1877, before Christmas—about one or two months before. Oscar Barnett made some of the castings for me.

Q. 2. When did you make locks first like Exhibit D 1?

A. I made it a long time after Exhibit D 3, but cannot say when.

Q. 3. How long have you known of the use in your trade of locks like Exhibit D 4?

A. That is the first lock I used on the top of bag frames—upwards of four years.

Q. 4. Compare lock of complainant, Exhibit D 2, with lock of defendant, D 1, and state which of the two is the cheaper to make

and which is the cheaper to apply to the bag frame and which of the two takes less metal for the portion that has the ring loop.

(Objection as to the first part that it does not appear the witness is capable of judging which is the cheaper lock to make.)

A. Exhibit D 1 is the cheaper lock to make, and also cheaper to apply to the bag; in Exhibit D 2 the case is lighter than the case in D 1; that it can be broken open at the ends unless it is made heavy. The bed plate in D 1 is lighter than the two plugs in Exhibit D 2.

Q. 5. Why is it cheaper to secure or rivet locks like Exhibit D 1 to the bag frame than to rivet locks like Exhibit D 2 to the bag frame?

A. Exhibit D 1 is cheaper to put it on the bag frame, because it is ready right away to put on the frame at once with two rivets; this lock, Exhibit D 2, is delivered in six pieces to the bag-maker and he has to put the pieces all together, then he can fasten it to the bag frame with four rivets.

Q. 6. How much longer time, if any, does it take the bag-maker to fasten to the frames locks like Exhibit D 2 than to fasten on locks like Exhibit D 1?

A. I can put on nearly three like D 1 while putting on one like D 2.

Q. 7. State whether or not the tapered ends of the case
139 shown in Exhibit D 1 makes it stronger than the case shown in Exhibit D 2.

A. Yes, sir; it is stronger.

(Objection to the question, as the witness has not been shown to be an expert or capable of judging or forming a competent opinion.)

Q. 8. Why do the tapered ends make a stronger lock case than the open ends?

(Same objection as last and as irrelevant.)

A. The case with the tapered ends is stronger than the open-ended one, because the opening for the plugs in the open-ended case is so large that the corner is exposed to be forced open.

Q. 9. To get an equal degree of strength in these two lock cases, in which of them could you use the thinnest metal?

A. I could use the thinnest metal in Exhibit D 1.

(Same objection as last.)

To get an equal degree of strength in Roemer's case—Exhibit D 2—he needs a greater thickness of metal than in the case shown in Exhibit D 1.

Cross-examined by Mr. LOWTHORP:

The bed plate of Exhibit D 1 I can make either of malleable iron. The end pieces in Exhibit D 2 may be made of the same kind of iron.

CHARLES KUPPER.

Sworn and subscribed this 5th November before me—
WILLIAM PATERSON,
U. S. Com. and Examiner.

H. A. WEST, being cross-examined at this time, says:

Cross-Q. 69. In comparing Exhibits D 1 and D 2 you state that Exhibit D 1 has no plugs, while Exhibit D 2 has two. Do
140 not these parts of the base plate in Exhibit D 1, which fill the openings in the ends of the lock case perform the functions of plugs?

A. To the extent of filling that portion of the lock case which does not contain the mechanism, they do—that is, they fill with the lock case that portion of the case which does not contain the mechanism.

Cross-Q. 70. Then, with the exception of the beveled ends of the case of D 1 and the bed plates of that exhibit and a slight difference in the rivet holes, Exhibits D 1 and 2 are the same, are they not?

A. No, sir.

Cross-Q. 71. What other difference is there?

A. In the plugs. They are beveled more sloping from the point where the handle rings are held to the top of the lock case, and the plugs are adapted to be inserted a short distance in the ends of the lock cases; they are adapted and to be held by a separate rivet.

Cross-Q. 72. Are there any shoulders on the plugs or end pieces of Exhibit D 2 substantially similar to the shoulders on the bed plate of Exhibit D 1, which shoulders are at the ends of the lock case in each exhibit?

A. Of course, it does not matter what term is used in referring to these parts. In Exhibit D 1 the parts referred to are shoulders, properly speaking, while those on plugs are stops, properly speaking. To the extent of forming a gun joint with the lock case the side shoulders or stops are similar, while those on the top are dissimilar. The equivalent of the top shoulders in Exhibit D 1 is found at the ends of the plugs where the handle rings are held.

H. A. WEST.

Examination here adjourned, to be continued at the convenience and agreement of the parties and their counsel; and having agreed upon 17th December, 1881, said examination was continued in the presence of the same persons.

141 DEC. 17, 1881.

Present: Mr. Lowthorp and Mr. Clayton.

Counsel for defendant proposing to call E. Jost to prove from his books of account that on the 17th of September, 1877, he made for Charles Kupper one gate of patterns for long lock plates, from which lock-plate castings like that shown in Exhibit D 3 were cast, counsel for complainant stipulates that the witness need not be called to make proof to that effect, and that the witness, if called, so would

testify, and that this statement may be taken as proven by said witness, Jost.

Defendant here rests.

Adjourned until Saturday next, the 24th instant, at 10 a. m.

WILLIAM PATERSON,
U. S. Com. and Exam'r.

Complainant's Rebuttal.

SATURDAY, 24*th December*, 1881.

This examination was continued in the presence of the same persons as before, Mr. Lowthorp and Mr. Clayton.

Counsel for complainant produces by consent a copy of letter patent U. S., No. 208,541, duly certified, granted to Roemer Bros. 1 Oct., 1878, for improvement in locks for satchels, and asks that same may be filed in evidence and marked as Exhibit A, in substitution of original letters heretofore offered.

Also a copy of assignment of said letters patent by Wm. Roemer to George and Henry Roemer, partners as Roemer Bros., duly certified, in substitution of the original assignment heretofore offered.

142 Also a copy of assignment of letters patent by Henry and George Roemer, partners as Roemer Bros., to William Roemer, complainant herein, in substitution of the original heretofore offered. Said certificates are marked as Exhibits B and C for complainant.

WILLIAM ROEMER, recalled, says, in answer to—

Q. 1. When did you first conceive this lock in its present practical form?

A. I made the invention in the early part of 1876, but made the first model in January, 1878, after which I constructed the lock. My idea was to make a lock that would, when finished, resemble a lock I invented a few months before, and which I would be able to make of cheaper material.

Q. 2. Was that model of which you speak similar to the lock patented by you?

A. It was the same thing.

Q. 3. Have you ever known any complaint to be made of the breaking of any of these lock cases at the end or otherwise?

A. No, sir; I have been using them since the date of my patent and no complaint was made by parties to whom I sold bags having those locks on, but I had a few complaints made by parties to whom I sold the locks, who did not understand how to rivet the lock to the frame in a proper manner.

WILLIAM ROEMER.

Counsel for complainant here asks that the lock case and fractured bed plate, heretofore marked for identification as X, be marked as Exhibit X for complainant.

Examination adjourned until Thursday, 29th inst., at 10 a. m.

143 THURSDAY, 29*th Dec.*, 1881.

Present: J. C. Clayton, who produces and submits a telegram in these words:

TRENTON, N. J., *Dec.* 28, 1881.

To J. C. Clayton, 570 High street, Newark:

I have finished unless you cross-examine. Shall I come? Answer.

T. C. LOWTHORP, Jr.

Mr. Clayton states that the above telegram relates to cross-examination of the witness, Wm. Roemer, and finishing of this cause, and that he replied by telegraph to Mr. Lowthorp that the latter need not come to-day, and that, therefore, the proofs in this case now are closed.

WM. PATERSON,
U. S. Com. and Ex.

(A true copy.)
[SEAL.] S. D. OLIPHANT, *Clerk.*

144 ROEMER *v.* NEUMANN.

"COMPL'T'S EX. JUDGE NIXON OPINION." S. R. B., U. S. Comm'r. March 19, 1884.

U. S. Circuit Court, District of New Jersey.

WILLIAM ROEMER
vs.
ALBERT O. HEADLEY. } On Bill, &c.

By NIXON, *District Judge:*

The bill is filed against the defendant for infringing letters patent No. 208,541, granted to complainant Oct. 1st, 1878, for "improvement in locks for satchels." The answer denies (1) the infringement and (2) that the complainant was the original and first inventor of the improvements claimed in said letters patent. The patentee, in his specifications, states that the principal object of the invention is to reduce the expense of the lock case and to render the same more practical in form and construction, and that it consists principally in forming the body of the lock case with open ends and in combining the same with cast blocks on end pieces which are separately made.

1. A satchel marked Exhibit D for complainant was produced, and also a witness who said that he purchased the same at defendant's store in Broadway, N. Y. The slightest inspection shows that the lock case thereon infringes the claims of the complainant's patent.

2. A number of exhibits are put in by the defendant to prove that the claims of the complainant's patent were anticipated.

145 After a careful examination of these I deem it necessary to advert to only two of them, to wit, Exhibit D 1 and Exhibit D 3. There is nothing in the patent sued on which is not fairly embraced in these, and if the defendant has shown that they were in public use before the date of the complainant's invention, the patent must be held void for want of novelty. The testimony is very meagre; the defendant offered only one witness to prove their prior use. Charles Kupper testified that he was a manufacturer of bag frames and locks; that he had made locks like Exhibit D 3, and had sold them to defendant; that the first he sold to him was on March 31st, 1878, and that the first he ever made was a month or two before Christmas, in the year 1877. When asked about locks like Exhibit D 1, he replied, "I made them a long time after Exhibit D 3, but I cannot say when." There was no other testimony on the subject of public prior use. The complainant's patent was issued Oct. 1st, 1878. He was called to prove the date of his invention, and was asked:

"Q. When did you first conceive this lock in its present practical form?

"A. I made the invention in the early part of 1876, but made the first model in January, 1878, after which I constructed the lock. My idea was to make a lock that would, when finished, resemble a lock I invented a few months before, and which I would be able to make of cheaper material.

"Q. Was that model of which you speak similar to the lock patented by you?

"A. It was the same thing."

Such are his statements and his only statements on the subject. They are not clear, but they show that the invention antedates the proof of the time of any prior use.

There was no cross-examination of the witness, and as the defendant seems willing to accept the account of these dates without question the court will do the same.

It must be held that the complainant was the first and original inventor of the improvements claimed in his patent.

146 Let there be entered a decree for an injunction and an account.

(A true copy.)

S. D. OLIPHANT, *Clerk.*

COMPLAINANT'S EXHIBIT HEADLEY DECREE. S. R. B., U. S. Com'r. March 19, 1884.

United States Circuit Court for the District of New Jersey. In Equity.

WILLIAM ROEMER, Complainant,
and
ALBERT O. HEADLEY, Defendant.

Interlocutory decree.

This cause having come on to be heard upon the bill, answer, replication, and proofs—oral, documentary, and written—taken and filed herein, and having been argued by the counsel for the respective parties herein—

Now, therefore, on consideration thereof, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, as follows, to wit:

That the letters patent No. 208,541, granted and issued on the first day of October, eighteen hundred and seventy-eight, being the letters patent referred to in the bill of complaint herein, are good and valid in law.

That the said William Roemer was the first and original
147 inventor and discoverer of the improvement in lock cases for satchels shown and described in said letters patent and claimed in the claims thereof, and is the exclusive owner of said patent.

That the said Albert O. Headley, the defendant herein, has infringed upon the said letters patent and the exclusive rights of the complainant under the same by the manufacture and sale of lock case bodies with open ends in combination with metal end pieces, similar to the end pieces and the combination described and claimed in said letters patent and the specification annexed thereto, as charged in the said bill of complaint.

And it is further ordered, adjudged, and decreed that the complainant do recover from the defendant the profits, gains, and advantages which the defendant has received or made or which have arisen or accrued to him from the said infringement of the said patent by the use or sale of the said combination and end pieces as described and claimed in said patent since the first day of February, eighteen hundred and eighty, and as well the damages which the said complainant has suffered by the said infringement by the defendant.

And it is further ordered that the complainant do recover from the defendant his costs and charges and disbursements in his said suit, to be taxed.

And it is further ordered, adjudged, and decreed that it be referred to Lewis W. Scott, Esquire, residing in the city of Trenton, to ascertain and take and state and report to the court an account of the number of the said improved lock cases and pieces made or

sold by the defendant, and also the gains, profits, and advantages which the said defendant has received or which have arisen or accrued to him since the first day of February, eighteen hundred and eighty, as well as the damages which the said complainant has suffered from infringing the said exclusive rights of the complainant by the manufacture, sale, and use of the said improvement patented in said letters patent.

And it is further ordered, adjudged, and decreed that the complainant on such accounting have the right to cause an ex-
148 amination of said defendant *ore tenus* or otherwise, and also the production of the books, vouchers, and documents of said defendant; and that the defendant attend for such purpose before said master from time to time as said master shall direct.

And it is also further ordered, adjudged, and decreed that a perpetual injunction be issued in this suit against the said defendant restraining him, his agents, clerks, servants, workmen, and all claiming or holding under or through him from making, selling, using, or in any manner disposing of any lock cases embracing the improvements described in said letters patent pursuant to the prayer of the said bill of complaint.

Dated December 21, 1883.

JNO. T. NIXON, *J.*

(A true copy.)
[SEAL.] S. D. OLIPHANT, *Clerk.*

ROEMER *v.* NEUMANN.

COMPLAINANT'S EXHIBIT FIRST ASSIGNMENT. S. R. B., U. S. Comm'r. March 19, 1884.

Whereas I, William Roemer, of Newark, New Jersey, have invented an improved lock for satchels, &c., for which I have made application for letters patent of the United States, which application has been duly filed March 26, 1878, and allowed April 2, 1878;

And whereas the firm of Roemer Brothers, of Newark, New Jersey, of which George Roemer and Henry Roemer are the members, is desirous of acquiring all my right, title, and interest in and to said invention and the letters patent therefor when granted:

Now, this indenture witnesseth, that for and in consideration of the sum of one dollar, in hand paid to me, the said William Roemer, the receipt whereof is hereby acknowledged, I have assigned and
149 transferred and do hereby assign and transfer to the said firm of Roemer Brothers all my right in and to the said invention and any letters patent that may be granted therefor, the same to be held and enjoyed by the said firm of Roemer Brothers, for its own use and behoof and for the use and behoof of its legal representatives, to the full end of the term for which said letters patent may be granted, as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made; and I do hereby request and authorize the Commissioner of Patents

to issue said letters patent, when granted, in accordance with this assignment.

In further consideration of said sum of one dollar, to me paid, I covenant and agree with the said firm of Roemer Brothers that I have a full and unincumbered title to the invention hereby assigned, which title I warrant unto said firm of Roemer Brothers.

In testimony whereof I have hereunto set my hand and affixed my seal this 25th day of September, 1878.

WILLIAM ROEMER. [L. S.]

Sealed and delivered in presence of—
F. v. BRIESEN.

Received for record Sep. 26, 1878, and recorded in Liber G 23, page 300, of Transfers of Patents.

[SEAL.] In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

W. H. DOOLITTLE,
Acting Commissioner.

(Ex'd : M. A. L.)

150 ROEMER *v.* MEUMANN.

COMPLAINANT'S EXHIBIT ASSIGNMENT. S. R. B., U. S. Comm'r. March 19, 1884.

Know all men by these presents that whereas we, Henry Roemer and George Roemer, trading under the firm name and style of Roemer Brothers, of the city of Newark, in the county of Essex and State of New Jersey, did obtain letters patent of the United States for certain improvements in locks for satchels, which letters patent bear date the first day of October, in the year of our Lord one thousand eight hundred and seventy-eight; and

Whereas William Roemer, of the city of Newark, in the county of Essex and State of New Jersey, is desirous of purchasing from us all the right, title, and interest which we have in and to the said invention in consequence of the grant of letters patent therefor:

Now, we, the said Henry Roemer and George Roemer, in consideration of ten dollars, to us paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over and by these presents do sell, assign, transfer, and set over unto the said William Roemer, his executors, administrators, and assigns, all the right, title, and interest which we have in and to the said invention, as secured to us by the said letters patent; to have and to hold the same to the said William Roemer, his executors, administrators, and assigns, for his and their own use and behoof, to the full end of the term for which the said letters patent were granted, as fully and entirely as the same would have been held and enjoyed by us had this assignment not been made.

In witness whereof we have hereunto set our hands and seals this twenty-first day of February, A. D. 1880.

HENRY ROEMER. [SEAL.]
GEORGE ROEMER. [SEAL.]

Sealed and delivered in the presence of—
FREDERICK F. HEY.
CARL LENTZ.

U. S. Patent Office. Received for record March 2, 1880. Recorded Liber Z 24, page 385.

(Ex'd: F. C. T.)

151 United States Circuit Court, Southern District of New York.

ROEMER *vs.* NEUMAN.

COMPLAINANT'S EXHIBIT FILE WRAPPER AND CONTENTS OF COMPLAINANT'S PATENT. S. R. B., U. S. Comm'r. March 11, 1885.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the letters patent granted William Roemer, assignor to Roemer Brothers, October 1, 1878, number 208,541, for improvement in locks for satchels.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be affixed [SEAL.] this 3d day of March, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

BENJ. BUTTERWORTH,
Commissioner.

Arthur v. Briesen, patent agency, 258 Broadway.

P. O. box 2979.

NEW YORK, *M'ch* 25, 1878.

To the Hon. Commissioner of Patents.

SIR: Please find enclosed the petition, specification, oath
152 and drawing pertaining to the application of W. Roemer for a patent for lock for satchels, &c.; also my check for $15 to pay the first Government fee on the same. The model is sent by mail to-day.

Please notify me when the case is filed.

Very respectfully, A. v. BRIESEN.

Petition.

To the Hon. Commissioner of Patents:

Your petitioner, a resident of Newark, county of Essex, and State of New Jersey, prays that letters patent of the United States be granted him for the improved lock for satchels, traveling bags, &c., set forth in the annexed specification for the term of 17 years, and he hereby appoints Arthur v. Briesen, of No. 258 Broadway, New York, N. Y., and his duly authorized agent, his attorney to prosecute this application, to make alterations and amendments therein, sign his name to the drawing, transact all business in the Patent Office connected therewith, and to receive the letters patent when granted.

Very respectfully, WILLIAM ROEMER.

Specification,

Describing a new and improved lock for satchels, traveling bags, &c., invented by William Roemer, of Newark, county of Essex, and State of New Jersey.

This invention relates to certain improvements in the construction of lock cases of the kind described in letters patent No. 190,907 and 195,233, which were granted to me May 15, 1877, and September 18, 1877, respectively.

The principal object of the invention is to reduce the expense of the lock case and to render the same more practical in form and construction. The invention consists principally in forming
153 the body of the lock case with open ends, and in the combining the same with cast blocks or end pieces, which are separately made, all as hereinafter more fully described.

In the accompanying drawing—

Figure 1 represents a bottom view of my improved lock case.

Figure 2 is a vertical longitudinal section of the same, and

Figure 3 is a vertical transverse section of the same on the line *c c*, figure 1.

Similar letters of reference indicate corresponding parts in all the figures.

The letter *A* in the drawing represents the body or central portion of the lock case. The same is made of sheet metal or other suitable material, and bent into a U form, substantially as indicated in figure 3, so as to form the top *a* and the sides *b b* of the lock case. The bottom of the lock case is open, and the ends of the portion *A* are also open. *B B* are pieces of cast metal or other suitable material, constructed to fit into the open ends of the body *A*, into which these blocks or plugs *B B* are inserted, as clearly shown in figure 2. Each block *B* should have a shoulder, *d*, to limit the degree of its insertion into the shell A, or of the insertion of the shell into the block.

In use on a satchel or carpet bag the ends *B B*, after being inserted into the shell *A*, or *vice versa*, in manner stated, are fastened

to the satchel or bag by a bolt or pin that passes through an aperture, *e*, of the shell *A*, and through a corresponding aperture, *f*, of the block *B*, there being one such bolt or pin at or near each end of the piece *A*, but the plugs or end pieces *B B* may also be secured by additional or separate bolts, if desired, and so may also the shell *A*. The blocks *B* may also serve, if desired, to secure the ends of the handle or the catches which close the jaws of the bag, and for other suitable purposes.

The lock portion proper is, of course, contained within the shell *A*, the drawing indicating the bolt *C*, which is moved by means of the handle *g*. The other parts of the lock are not necessary to show.

By casting the pieces *B B* the same mould may be used for
154 both pieces, *B B*, of one lock case, and the entire case is made very inexpensive and yet practical.

The ends are adapted to shells *A* of suitable or varying lengths.

I claim—

1. In a lock case the combination of the body *A*, having open ends, with the end pieces *B B*, that are applied thereto, substantially as herein shown and described.

2. The end pieces *B B* of a lock case made with shoulders *d* for defining their position relative to the body *A*, substantially as and for the purposes specified.

WILLIAM ROEMER.

Witnesses:
T. B. MOSHER.
F. v. BRIESEN.

Oath.

STATE OF NEW YORK, } *ss:*
County of New York, }

William Roemer, the above-named petitioner, being duly sworn, deposes and says that he verily believes himself to be the original and first inventor of the improved lock for satchels, traveling bags, &c., described and claimed in the foregoing specification; that he does not know and does not believe that the same was ever before known or used, and that he is a citizen of the United States and a resident of Newark, Essex county, New Jersey.

WILLIAM ROEMER.

Sworn to and subscribed before me this twenty-fifth day of March, 1878.

[SEAL.] T. B. MOSHER,
Notary Public.

155 *Memorandum of Fee Paid at U. S. Patent Office.*

Inventor:
William Roemer.
Patent to be issued to:
Roemer Brothers.

Name of invention as allowed:
Lock for satchels.
Date of payment:
September 26, 1878.
Fee:
$20.00.
Solicitor:
A. v. Briesen.
Date of circular of allowance:
April 2, 1878.
Send patent to—
A. v. Briesen,
258 Broadway,
New York, N. Y.

R. 1878. Wilkinson.
No. 208,541. 4,575–37.

William Roemer,
Ass'or to Roemer Brothers, of same place,
Of Newark,
County of Essex,
State of New Jersey.

Lock of satchels, &c.

Rec'd March 26, 1878.
Petition " " "
Affidavit " " "
Specification " " "
Drawing " " "
Model " " "
156 Cert. dep.
1. Cash $15, March 26, 1878.
Add'l fee cert.
" " cash $20, Sept. 26, 1878.
Examined M'ch 30, '78. A. G. Wilkinson.
2. Issue April 2, '78. F. A. Seely.
3. Patented Oct. 1, 1878.
Circular, April 2, 1878.

A. v. BRIESEN,
258 *Broadway, New York City.*

1878.

Contents.

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Title.
Improvement in locks for satchels.
Ex'd: M. McK.
J. A. W.
70. Locks and satchels.
Bag locks.

(Here follows diagram marked p. 157.)

158 UNITED STATES PATENT OFFICE.

WILLIAM ROEMER, of Newark, New Jersey, assignor to Roemer Brothers, of same place.

Improvement in Locks for Satchels.

Specification forming part of Letters Patent No. 208,541, dated October 1, 1878; application filed March 26, 1878.

To all whom it may concern:

Be it known that I, William Roemer, of Newark, county of Essex, and State of New Jersey, have invented a new and improved lock for satchels, traveling-bags, &c., of which the following is a specification:

This invention relates to certain improvements in the construction of lock-cases of the kind described in letters patent No. 190,907 and 195,233, which were granted to me May 15, 1877, and September 18, 1877, respectively.

The principal object of the invention is to reduce the expense of the lock-case, and to render the same more practical in form and construction.

The invention consists, principally, in forming the body of the lock-case with open ends, and in combining the same with cast blocks or end pieces, which are separately made, all as hereinafter more fully described.

In the accompanying drawing, figure 1 represents a bottom view of my improved lock-case. Fig. 2 is a vertical longitudinal section of the same; and Fig. 3 is a vertical transverse section of the same on the line *c c*, Fig. 1.

W. ROEMER.
Lock for Satchels.

157

No. 208,541. Patented Oct. 1, 1878.

Fig. 1

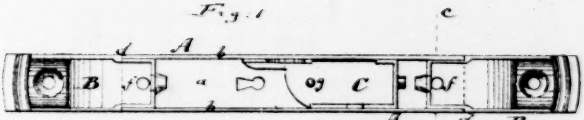


Fig. 2

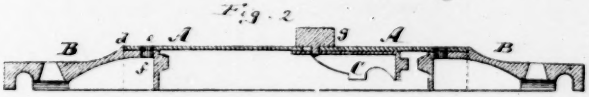


Fig. 3

No. 315.
Roemer
v
Neumann
et al
fr. 154.

Witnesses:
John C. Tunbridge
T. B. Mosher

Inventor:
Wm Roemer
by his attorney
A. v. Briesen

Similar letters of reference indicate corresponding parts in all the figures.

The letter A in the drawing represents the body or central portion of the lock-case. The same is made of sheet metal or other suitable material, and bent into a U form, substantially as indicated in Fig. 3, so as to form the top *a* and the sides *b b* of the lock-case. The bottom of the lock-case is open, and the ends of the portion A are also open.

B B are pieces of cast metal or other suitable material, constructed to fit into the open ends of the body A, into which these blocks or plugs B B are inserted, as clearly shown in Fig. 2. Each block B should have a shoulder, *d*, to limit the degree of its insertion into the shell A, or of the insertion of the shell into the block.

In use on a satchel or carpet-bag, the ends B B, after being inserted into the shell A, or *vice versa*, in manner stated, are fastened to the satchel or bag by a bolt or pin that passes through an aperture, *e*, of the shell A, and through a corresponding aperture, *f*, of the block B, there being one such bolt or pin at or near each end of the piece A; but the plugs or end pieces B B may also be secured by additional or separate bolts, if desired, and so may also the shell A. The blocks B may also serve, if desired, to secure the ends of the handle or the catches which close the jaws of the bag, and for other suitable purposes.

The lock portion proper is, of course, contained within the shell A, the drawing indicating the bolt C, which is moved by means of the handle *g*. The other parts of the lock are not necessary to show. By casting the pieces B B the same mold may be used for both pieces B B of one lock-case, and the entire case is made very inexpensive and yet practical. The ends are adapted to shells A of suitable or varying lengths.

I claim—

1. In a lock-case, the combination of the body A, having open ends, with the end pieces, B B, that are applied thereto, substantially as herein shown and described.

2. The end pieces, B B, of a lock-case, made with shoulders *d*, for defining their position relative to the body A, substantially as and for the purpose specified.

WILLIAM ROEMER.

Witnesses:
T. B. MOSHER.
F. v. BRIESEN.

159 United States Circuit Court, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN, Impleaded with GUSTAV BERNHEIM and CARL NEUMANN. } In Equity.

Testimony taken on the part of the defendant, under and pursuant to the 67th rule of the Supreme Court of the United States, as amended, before John A. Shields, Esqr., a standing examiner of said court.

NEW YORK, *April 2d*, 1884.

Present: William C. Hauff, Esq., of counsel for defendant, and James Turk, Esq., for Messrs. Briesen and Steele, counsel for complainant.

Mr. JONATHAN KOCH, a witness produced on the part of the defendant, being duly sworn, deposes and says:

1 Q. Please state your name, age, residence, and occupation.

A. Jonathan Koch; age, 60 years; I reside at 225 East 39th street, N. Y. city; I do business at 64 Reade street, N. Y. city, as a manufacturer of satchels and travelling bags.

2 Q. How long have you been occupied as a manufacturer of satchels and travelling bags?

A. Over thirty years.

160 3 Q. Please look at Defendants' Exhibit Roemer's Lock Case, filed herein, and state whether you recognize the construction of device there shown.

A. I do.

4 Q. Have you ever purchased any locks containing the construction shown in that exhibit; and, if so, from whom?

A. I have; from Roemer Brothers.

5 Q. Do you deal in or purchase such locks now; and, if not, why have you given up dealing in and purchasing said locks?

A. No; they are not convenient and make much trouble to put them together.

6 Q. When you purchased such locks from Roemer Brothers did you always pay a fixed price for them, or was the price at any time lowered?

Objected to as leading.

A. Yes, sir; the price was not lowered; I paid always one and the same price for them as long as I bought them.

7 Q. Were the end pieces in such locks that you bought, at any time, nickel plated?

The same objection and as immaterial.

A. No, sir.

8 Q. What were they then?

A. Japanned.

Cross-examined by JAMES TURK, Esq.:

9 X Q. Do you still have dealings with Roemer Brothers?
A. Yes, sir.
10 X Q. Who requested you to come here to testify to-day?
A. Mr. Bernheim.
11 X Q. Has a subpœna been served on you?
A. No.
12 X Q. Do you have dealings with the firm of R. Neumann & Co.?
A. Yes, sir.
161 13 X Q. Do you buy satchel locks from them?
A. No; no locks.
14 X —. What is that you buy from them?
A. Travelling railroad frames and satchel frames.
15 X Q. You testified about certain locks that you have purchased from Roemer Brothers. In what condition were those locks when you bought them?
A. The locks were all in single pieces, not combined together.
16 X Q. About when did you first purchase these locks from Roemer Brothers?
A. Somewhere about 1881.
17 X Q. And how long did you continue to use them?
A. Well, I can't recollect exactly whether six months or over six months.
18 X Q. You say, in answer to Q. 5, these locks are not convenient and make much trouble to put them together. Is that the only reason why you ceased to deal in those locks?
A. Yes, sir.
19 X Q. And no other reason?
A. Well, that is the only reason.
20 X Q. About how many of those locks did you deal in?
A. I don't remember; I can't recollect how many I used.
21 X Q. Can't you tell us about how many you used?
A. No, I cannot. I have not got it in my head how many dozen.
22 X Q. When did you cease dealing in those locks?
A. I can't recollect.
23 X Q. You have no dealings in them now, have you?
A. No, sir.
24 X Q. Have you any of them on hand?
A. No, sir.
162 25 X Q. Were they all attached to bags by you and sold?
A. Yes, sir.
26 X Q. Did you have any difficulty in so doing?
A. No difficulty in selling.
27 X Q. Please hear the examiner read to you X Q. 15 and answer, and then tell us how many "single pieces" there were in each lock.
A. All together, six.
28 X Q. And when these locks were furnished to you by Roemer

Brothers, these 6 pieces which went to make up each lock were separate, were they not?

A. They were separate.

29 X Q. And they were united together by you after you received them?

A. Yes, sir.

30 X Q. You are positive of this, are you?

A. Yes, sir.

31 X Q. Didn't you try to induce Roemer Brothers to sell these locks to you cheaper than they were doing?

A. No.

32 X Q. And you never asked them to do that?

A. I can't recollect whether I did or not.

33 X Q. Did you ever tell them that you could buy those locks from other parties cheaper than Roemer Brothers were selling them to you?

A. No, sir.

34 X Q. At the time that you stopped using those locks do you know whether any other parties had them in the market?

A. Not at that time. I don't know.

35 X Q. Since that time?

A. After that I have seen them.

36 X Q. Since that time have you ever dealt in such locks which were made by other parties?

A. Yes; with frame and lock together.

37 X Q. From whom did you buy them?

A. R. Neumann & Co.

163 38 X Q. Did Mr. William Roemer ever ask you to give an affidavit to the effect that you were buying these locks from R. Neumann & Co.?

Objected to as immaterial.

A. I don't recollect.

39 X Q. You would probably have remembered it, wouldn't you, if he had asked you?

Objected to as already fully answered.

A. Yes, sir; I would.

40 X Q. Are you willing to say that he did not ask you to make such an affidavit?

A. I can't recollect.

41 X Q. Did you buy these locks which were attached to the frames at a less price from R. Neumann & Co. than you paid Roemer Brothers for such locks?

A. I never bought any single locks from Neumann & Co. I bought the locks and frames together for a certain price.

42 X Q. When you bought these locks and frames together for a certain price from R. Newmann & Co., did they cost you less than when you bought the locks from Roemer Brothers and put them on frames?

Objected to as immaterial.

A. I can't recollect whether the price was less or not.

43 X Q. Did you ever at any time tell Roemer Brothers that you could buy these locks cheaper from other parties than they sold them to you?

Objected to as already answered.

A. I can't recollect whether I did or not.

44 X Q. You are not willing to say positively whether you did?

A. I cannot say; I am not certain whether I did or not. Therefore I cannot say for certain.

164 45 X Q. Are you still purchasing from R. Neumann & Co. such locks and frames as you have testified about?

A. No, sir.

46 X Q. When did you last purchase any from them?

A. About a year and a half ago.

JONATHAN KOCH.

Sworn before me—

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Wednesday, April 9, 1884, at 11 a. m.

NEW YORK, *April* 9, 1884—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel as before; also the witness, William Heller.

Counsel for defendant states that this witness prefers to testify through an interpreter, and owing to the inability of counsel for defendant obtaining an interpreter to-day the examination is adjourned to Monday, April 14, 1884, at 10 a. m.

165 NEW YORK, *April 14th*, 1884—10 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Mr. WILLIAM HELLER, the witness called on the part of the defendant, being duly sworn, and Mr. Faber du Faur being duly sworn as interpreter to interpret the questions into German to the witness and to translate the answers of the witness from German into English, the witness, in response to questions by defendant's counsel, responds through the interpreter as follows:

Counsel for complainant seasonably objected and now repeats his objection to the use of an interpreter, as it has not yet been made to appear that the witness is unable to speak English, and counsel desires to address some questions to the witness on the record without the use of an interpreter and in the English language in order to ascertain whether he understands the same and can reply in the same language.

Counsel for defendant having satisfied himself before the witness was sworn of the impropriety of attempting to examine this witness in English states that he cannot in justice to his client allow the

witness to be interrogated in English, but has no objection to any preliminary examination of the witness by complainant's counsel through the interpreter.

Counsel for complainant asks the following questions:

Q. How long have you been in this country? (And requests the examiner to put the question to the witness without the use of an interpreter.)

166 Counsel for defendant objects to subjecting the witness to such unfair examination, but states if the purport "of both counsel's statements" thus far made on the record will be explained to the witness by the interpreter he will allow the present question to be addressed to the witness in English.

Counsel for complainant replies that there is no reason for having these statements read to the witness, as they are matter addressed to the court and not to the witness.

Counsel for defendant replies that in the case of witnesses who are familiar with the English language such statements which complainant's counsel claims as matter addressed to the court are heard by such witnesses and understood by them, and consequently insists that this present witness shall enjoy the same privilege as is accorded to other witnesses.

Complainant's counsel states as follows: It being the evident intention of defendant's counsel to prevent an inquiry as to the witness' knowledge of the English language and as it has not been yet made to appear that the witness does not understand the English language, and, furthermore, as there is a possibility that the interpreter will be called as a witness for the defence, counsel for complainant objects to the use of the interpreter and desires the evidence of the witness to be taken in the English language without an interpreter.

This objection stands to the whole evidence of the witness without repetition.

Counsel for defendant denies the imputation contained in complainant's counsel's last preceding statement as to his trying to "prevent" anything, as this witness will be submitted for cross-examination in due time, and to show the interpreter's fairness he addresses to the interpreter the following questions:

167 Q. You have acted as expert for the defence in this case, have you not?

A. I have.

Q. Are you capable of fairly, truly, and impartially acting as interpreter in the taking of this testimony?

A. I am.

Q. And will you so act in the taking of such testimony?

A. I will.

The examination of the witness is now proceeded with.

Counsel for complainant suggests that his question be now put to the witness by the examiner, and he has no objection to the examiner's reading in the presence of the witness the whole record of

this day's proceedings, but he does object to any translation of the same, the question being put to the witness merely to test his knowledge of the English language.

Defendant's counsel declines to submit the witness or his client to such unfair treatment of the witness.

Counsel for complainant renews his objections.

1 Q. What is your name, age, residence, and occupation?

A. William Heller; age, 61 years; residence, New York city; am a manufacturer of travelling bags.

2 Q. Please look at Exh. D 2 and state if you ever used locks of that construction.

A. Yes, I used them.

3 Q. Do you use them now?

A. No; not any more at the present.

4 Q. Why did you stop using them?

This line of examination is objected to as immaterial. The objection to stand without repetition.

168 A. Because another lock all in one piece has come into the market.

5 Q. And why do you prefer this lock in one piece to locks like Exhibit D 2?

Objected to as leading and as assuming what the witness has not testified to.

A. Because it is easier to put the lock made in one piece upon the frame.

Cross-examined by J. TURK, Esq.:

Counsel for complainant renews his objections and proceeds to examine the witness *de bene esse*.

6 X Q. How long have you been in this country?

A. Thirty-one years.

7 X Q. How long have you been a manufacturer of travelling bags in this country and in what place or places?

A. About eighteen to twenty years, at New York, at 254 Broadway; also in Fulton street—I don't remember the number; also in Duane street—don't know the number; at 19 Murray street, and at 91 Chambers street.

8 X Q. Do you understand the English language?

A. Not altogether—some.

9 X Q. In giving any of your answers here to-day have you spoken in English?

A. I said 91 Chambers street, instead of saying it in German. I know the English of 91. I may have use some other English words.

10 X Q. Did you understand any of the questions before they were translated to you?

A. I understood some of the words.

11 X Q. You have testified that you have used locks like Exhibit

D 2, and that you stopped using them because another lock has come into the market. By whom is that lock made?

Objected to as calling for hearsay.

169 A. I purchase it anywhere.

12 X Q. Do you know who makes it?

A. No; I don't know their name.

13 X Q. Where do you purchase it?

A. I purchase it from the frame manufacturers—from Roemer, Neumann, Walsh, and some others.

14 X Q. For about what length of time have you been using this lock which you say you buy from Roemer, Neumann, and others?

A. I really can't tell. I can't remember, it is so long.

15 X Q. Can't you give us a general idea?

A. The locks have been in the market so long I don't remember. If it is necessary you can find it in my books.

16 X Q. Please look at the articles which I now show you and state whether any one of them is like this lock; and, if so, which. I mean the lock which you refer to in the last preceding answer.

(Before the witness are placed Exhibits D 1, D 2, D 3, and Exhibit X.)

A. No; I don't see any that is like it.

17 X Q. Will you please describe the construction of that lock which you say you buy from Roemer, Neumann, Walsh, and some others?

A. We get it in one piece and have nothing further to do with it.

18 X Q. Do you know how many pieces are to it?

A. I haven't counted them. I don't know.

19 X Q. And you are unable to describe the construction of this lock, are you?

A. No; I can't draw. It must be drawn.

20 X Q. I didn't ask you to draw it. Will you please describe its construction in words if you are able to?

A. I can't do it. The locks are put upon the frames when I get them. I send the handles to Newark and then the frames are sent to me with the locks and handles attached thereto.

21 X Q. To whom do you send the handles?

170 A. To the manufacturers of the frames.

22 X Q. Please give their names.

A. The above-mentioned names.

23 X Q. Do you mean by that answer Roemer, Neuman, Walsh, and some others?

A. Yes; I send the handles to the parties where I purchase the frames.

24 X Q. By what name are these locks known in the trade—I refer to the locks which you say you purchased from Roemer, Neuman, Walsh, and others?

A. The lock is not known by any name; the frame is known by a number. Roemer's locks have numbers; all the locks have numbers.

25 X Q. I now show you Compl't's Exh. Infringing Lock and ask you whether that is like the lock which you say you buy from Roemer, Neumann, Walsh, and some others?

A. This lock looks like the lock that I purchase.

26 X Q. That is as full an answer as you can make to X Q. 25, is it not?

A. Yes.

27 X Q. And you still purchase these locks which you say in answer to X Q. 13 you purchase from Roemer, Neumann, Walsh, and some others, do you not?

A. Yes; I still purchase them.

28 X Q. Does Neumann supply these locks to you all in one piece and fast to the frame?

A. I purchase most all with the lock fastened to the frame, mostly.

29 X Q. Do you buy any that are not fastened to the frame from Neumann?

A. That is an entirely different kind of lock.

30 X Q. What kind of a lock is that?

A. It is a small lock; there are so many different kinds of locks.

31 X Q. Is it anything like the lock attached to Compl't's Exh. Neumann Satchel, which I now show you?

A. No; I don't keep this.

171 32 X Q. Is it like any of the locks to which your attention has been called here to-day?

A. No, none of them; such as like Def'ts' Exh. Bernheim 1875 Lock I used to keep.

Answer objected to as not responsive.

Counsel for defendant states that the witness was in all probability led to answer as he did by having lying before him the whole bundle of lock exhibits filed by defendant herein on the motion for preliminary injunction on January 12th, 1884.

33 X Q. What kind of a lock is it that you buy from Neumann which is not fastened to the frame; can't you give me a more definite answer than you have given to X Q. 30?

A. I said before it was a small lock. I showed it here. (Witness points to Def'ts' Exh. Bernheim 1875 Lock.) I purchase most of my locks from Roemer.

34 X Q. Have you ever dealt in any locks like that attached to Compl't's Exh. Neumann Satchel?

A. I made only a few frames with them. I made a few bags with such frames and locks, but I don't keep the frames and locks; it is possible that I may have made this exhibit.

35 X Q. From whom did you get those locks like that attached to Compl't's Exh. Neumann Satchel?

A. I got them with the frames—not separate locks; from Mr. Neumann I took a few frames with the locks on them.

36 X Q. When you used locks like Exh. D 2, were they all in one piece?

A. They were just like Exh. D 2.

Counsel for defendant requests the examiner to note that the witness before answering had placed before him Exh. D 2, with the two end pieces not inserted into the case.

Counsel for complainant also requests the examiner to note that the exhibit was handed to the interpreter.

172 And further, defendant's counsel requests the examiner to note that said exhibit was handed to the interpreter with the two end pieces not inserted into the case.

The examiner so notes.

37 X Q. You are positive as to your answer to 36 X Q., are you not?

A. So they were.

38 X Q. You have not fully answered 36 X Q. I want to know whether those locks like Exhibit D 2, which you say you used, were all in one piece when they were received by you, or whether they were in separate pieces, and were put together by you after you received them?

A. I received them in separate pieces and then we put them together.

39 X Q. And I understand you to testify that you gave up the use of those locks and used instead of them locks all in one piece, which you bought from Roemer, Neuman, Walsh, and some others.

A. I got them in one piece; they were locks I had no trouble with. I get the locks already fixed on the frame, and then I have no trouble with them.

40 X Q. And you stopped using locks like Exhibit D 2 and used instead of them locks all in one piece, fixed on the frame, did you not?

A. I have stopped using locks like Exhibit D 2. I don't know whether the locks I used are made of one piece; they are fastened upon the frame.

41 X Q. And you can't tell us how that lock is constructed, can you?

A. I don't know. I purchase them with the frames, complete.

Redirect by WM. C. HAUFF, Esq.:

42 Re-D. Q. Do you know whether the lock which you buy from Roemer, Neumann, Walsh, and some others has its parts put
173 together like Complainant's Exhibit Infringing Lock? I show you the case of said exhibit separated from its base.

A. They are complete when I get them. I don't see how they are made when I get one of these locks.

WM. HELLER.

Sworn before me—

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Tuesday, April 22d, 1884, at 11 a. m.

NEW YORK, *April* 22*d*, 1884—11 o'clock a. m.

Met pursuant to adjournment.
Present: Counsel as before.

EDMUND JOST, a witness produced on behalf of the defendant, being duly sworn, deposes and says:

1 Q. Please state your name, age, residence, and occupation.
A. Edmond Jost; age, 40 years; I live in Newark, New Jersey; I am a machinist, brass founder, and brass finisher.
2 Q. Do you know Charles Kupper, of Newark; and, if so, about how long have you known him?
A. Yes, sir; I know him about since 1874 and longer. He was in business for himself about 1874, and I know him since that time.
3 Q. Have you ever done any work for said Kupper regarding lock plates?
A. Yes, sir.
4 Q. What did it relate to? Please specify as definitely as you can.
A. I made the lock plates the same as this. Witness takes in his hand the plate of "Exhibit D 1 for Headley," and says:
174 The pattern brought to me was from an iron casting, but it was malleable iron casting.
5 Q. When was it that you made the lock plates the same as in said Exhibit D 1 for Mr. Kupper?
A. It was in the fall of 1877. I can only prove it by my books, as I have made another lock-plate pattern in September, 1878, and some castings from this pattern. I have made the first lock-plate castings of Exhibit D 1 about one year before. I have made the other pattern for the other lock-plate castings.
6 Q. What was the appearance of the other lock plates, the pattern of which you made about one year after making the lock-plate castings of Exhibit D 1?
A. The appearance was like this here (witness takes in his hand the lock plate of Exhibit D 3), and I have got the pattern of those castings in my factory yet.
7 Q. What is the date, as near as you can give it, when you made the patterns for the lock plates of Exhibit D 3? If you have any book here present to assist you in fixing such date you may make use of it.

All evidence in relation to books and requiring the use of books objected to unless it should first be made to appear what the books are and in whose handwriting the entries are.
Counsel for defendant informs counsel for the complainant that he intends to make such inquiries as will tend to establish the character of such book or books at the earliest opportunity.

A. The charge for those patterns are in my book which I have here present.

The complainant in person here interrupts the witness by turning over the leaves of the book and stating "what year."

175 Counsel for defendant protests against the complainant interfering with the witness.

Counsel for complainant in reply to the foregoing statement, which, although it does not appear to be, was in reality made by defendant's counsel, and in reply to the protest of defendant's counsel says that his client intended no interruption of the witness, but merely made a remark addressed, as he understands it, to defendant's counsel.

8 Q. In whose handwriting are said charges in your book?

A. They are in my own.

9 Q. Please read to the officer from your book the charge for the patterns of the lock plates Exhibit D 3.

A. "September 17, 1878, 3 gates of patterns, $14.00."

Counsel for defendant calls the attention of the officer and of complainant's counsel to the fact that said entry quoted by the witness is on page 6 of the book just referred to, the heading on which page reads, "Ch'l's Kupper," so as to enable the opposite side to satisfy itself that the witness has correctly quoted.

10 Q. And is that date of September 17, 1878, the date when you made such patterns?

Objected to as leading.

A. The date is not correct, as the patterns had been made before, and only charged in the same bill with the castings made from those patterns—the first lot.

11 Q. How long before September 17, 1878, did you make the patterns for the lock plate of Exhibit D 3?

A. The patterns had been made about one or two months before they were charged, as there was some castings made, a few of

176 them, in order to try them, and then the patterns were changed again to what they are now.

12 Q. And the date when "they were changed" was what date?

A. September 17th, 1878.

13 Q. How are you able to fix the date of fall of 1877 as the date when you made the lock plates the same as in Exhibit D 1? Please inform us how you get at that date.

A. I cannot fix the date at all, but I remember that I casted the plates in the same season the year previous.

14 Q. The year previous to what?

A. To September 17, 1878.

Counsel for defendant requests the officer to certify that the quotation in the witness' 9th answer, "Sept. 17, 1878, 3 gates of patterns, $14.00," is a correct quotation from the book. The officer so certifies.

Cross-examined by JAMES TURK, Esq.:

15 X Q. Are you positive of the evidence that you have given here?

A. Yes, sir.

16 X Q. And you wish to make no alterations in it, do you?

A. Not as I can do in my memory.

17 X Q. You are positive, are you, that you made lock plates like Exhibit D 1 for Mr. Kupper in the fall of 1877, are you not?

A. Am not certain that it was in 1877, but I know it was not less than nine months or more that I made those lock plates like Exhibit D 1 the year before, and I made them from malleable iron castings.

18 X Q. Are you sure that you made them in 1877; might it not have been the spring of 1878?

A. I am only certain that I made them in the same season the year previous, as the castings he is charged for in my book are for the later lock-plate castings of Sept. 17, 1878; I would also
177 state that these charges for castings consisted of lock-plate castings, rings, and front hasps for the same lock plates.

19 X Q. Are there any charges in your book for the castings for the lock plates like Exhibit D 1?

A. Yes, sir; the charges are amongst the other castings.

20 X Q. Then, if these charges are to be found in your book, can you not tell us the exact date when the castings were made?

A. I cannot tell you the exact date, as I do not always specify the castings in the charge, except brass or composition castings, unless there is some new patterns made for the same castings, and the patterns and the castings are specified.

21 X Q. Did you make the pattern for these castings like Exhibit D 1?

A. I did not make the patterns; the patterns were brought to me.

22 X Q. Have you those patterns still?

A. I gave those patterns back after the castings were made. I made only a few dozen—I cannot tell how many dozen, but I made only a very little.

23 X Q. There was only one pattern, was there?

A. I cannot remember; the pattern was brought to me, and it was a malleable iron casting. I don't know whether there was two or six patterns.

24 X Q. Were there more than one?

A. I am not certain whether there was more than one, but I am sure I sent for more castings after the first one was brought to me, and I filed them to be smoother and to get out the castings quicker.

25 X Q. When did you return these castings, and to whom?

A. Which castings are those—the pattern castings or the castings which I made?

26 X Q. When did you return the pattern castings, and to whom?

A. I haven't got the patterns in my factory any more, and they must be returned; when I can't tell, as I have only made castings once, and no more, after this first small lot of the same iron pattern.

178 27 X Q. Are you positive that patterns like Exhibit D 1 were brought to you nine months before Sept. 17, 1878?

A. I am positive that those patterns have been brought to me in the same season that I have made the later ones, as I have said already, and I can remember whether I have made the same goods four weeks ago or one year.

28 X Q. You don't desire to make any alterations or corrections in your last answer, do you?

Objected to as already answered.

A. I have answered you as correct and as far as my memory goes, and I consider my memory a good one. If I should be wrong I cannot help it, unless somebody else should prove it to be so, and I don't know whether another person remembers what I have done in the same time better than myself.

29 X Q. Who brought the patterns from which you made castings like Exhibit D 1 to you?

A. They were sent from Mr. Chas. Kupper.

30 X Q. Out of what kind of metal did you make those castings?

A. I made them of composition, or what is called brass castings.

31 X Q. Were they all made by you?

A. I do not know; but I think there was some made in some other foundry of malleable iron, and I have not seen any brass castings of the same pattern in Mr. Kupper's shop.

32 X Q. Whose foundry do you think those malleable iron castings were made in?

A. I think they were made in Oscar Barnett's foundry in Newark, New Jersey, as Mr. Kupper told me that he had this malleable iron castings from there. This is only what I can remember.

33 X Q. Can you give us the names of any of your workmen who were in your employ at the time when you made castings like Exhibit D 1?

A. I can give you the name of one man, and he is a ma-
179 chinist, and I think he does not know anything about the foundry business. This man I mentioned, I did not keep account of the time of the year, I only think it was about the time that these plates were made when he was working for me, and at that same time my business was very small and employed brass moulders only temporarily. I also before this time and at the same time made brass castings for Mr. Kupper myself.

34 X Q. Please give us the name of this machinist and his address, if you know it.

A. I would have to tell—first to state again that I am not sure at that same time that that man was working for me—that machinist; but I will ask him whether he remembers it, as he worked for me three or four times—from several weeks to several years.

35 X Q. Question repeated.

A. His name is Frederick Orloff; I don't know his address, but he works in my shop now.

36 X Q. Can you give us the names of any of the moulders who were employed by you when you made these castings like Exhibit D 1?

A. I can give you one name of one moulder which was working for me about that time longer than any others; it is Frederick Kohlmann; I don't know his address, but he lives in Newark.

37 X Q. I understand you to testify in answer to X Q. 20 that in making the charges in your book you do not specify the castings "except brass or composition castings." Now, are brass and composition castings designated as such in your book?

Objected to as quoting but part of the answer.

A. If I make brass or composition castings for anybody I generally charge so many pounds brass castings or so many pounds of composition castings. When I make a new pattern for anybody to be charged separate I generally say, as for instance, so many
180 pounds of composition or so many pounds of brass castings, when the bill includes the charge of the pattern.

38 X Q. You say in your testimony that you cannot tell the exact date from the charges in your book when you made the castings like Exhibit D 1. Will you please take your book and see how near you can come to the time when you made these castings?

A. I can come as near in my books, as I have done castings for Mr. Kupper in October, 1877; that is the latest; or earlier, from October, 1877, into the earlier part of 1877.

39 X Q. Can you tell us what castings those were that you did for Mr. Kupper in October, 1877?

A. I cannot.

40 X Q. Your book doesn't show what the castings were, does it?

A. The castings are generally mixed.

41 X Q. And are you able, from the charges in your book, to distinguish one kind of castings from others?

A. I am not, as I have told already that most always for such small castings there is always some of different patterns.

42 X Q. When did you make the patterns for the lock plates of Exh. D 3?

A. I have already answered that question, and I say again that they have been made several weeks or one or two months before they were charged in my book.

43 X Q. How many of those patterns were there?

A. There was one gate of pattern with about ten or twelve single patterns on; now they are loose; taken from the gate.

44 X Q. When did you first make any castings like the castings attached to Exh. D 3?

A. This I have also answered already. As I said, there was some castings made and not charged in order to try them, and the patterns changed afterward again. I am ready to tell what the changes were.

181 45 X Q. When were the castings made that are charged for in the entry of Sept. 17, 1878?

A. They were finished and delivered and charged at the same date. If they were laying one or two days in my shop, as some orders for castings is not filled in one day, I cannot tell.

46 X Q. When was the entry of Sept. 17, 1878, actually made in your book?

A. The entry for the castings and for the patterns was made at the same date, but the specification of the patterns was made some time afterward, when Mr. Kupper asked me whether I could tell at what time the castings was made for these lock plates of Exh. D 3. The bill consisted of the castings, also of three gates of patterns, as I have never made the same number and the same shape of patterns at any previous time or afterward.

47 X Q. About when was it that Mr. Kupper spoke to you as you testified in your last answer?

A. It was about the time, which I don't know, when Mr. Kupper told me that Mr. Roemer, of Roemer Brothers, was in his office, and he told me that Roemer was going to sue him, Kupper, about some lock that I casted for him, several dozen, or whatever it was. It might be about two years ago.

48 X Q. And at that time you made the addition to the charge of Sept. 17, 1878, as I understand you; am I right?

A. Yes, sir; I done this to satisfy myself in further questions without any other influence.

All after "Yes, sir," objected to as not responsive by counsel for complainant.

49 X Q. Out of what metal did you make the castings which were like Exh. D. 3?

A. I have already said they were composition or brass castings which constitutes the same.

50 X Q. Did you have any made outside of your shop?

A. I do not get brass castings made outside. I make all my own.

182 51 X Q. Did you have any castings like Exhibit D 3 made outside of your shop which were not brass or composition castings?

A. No.

Redirect by WM. C. HAUFF, Esq.:

52 Re-D. Q. What did the "malleable iron castings," mentioned by you in answer 17, from which you made three lock plates like Exhibit D 1, look like?

Objected to as incompetent.

A. The castings I made were just the same as this (pointing to the plate of Exhibit D 1).

53 Re-D. Q. And the malleable iron castings that you made them from, what did they look like?

Objected to as already answered.

A. They looked the same as this (pointing to the plate of Exhibit D 1), as far as I can remember.

54 Re-D. Q. In answer 27 you state that those patterns have been brought to you in the same season that you made the later ones. Please specify a little more definitely what you mean by the same season.

Objected to on the ground that the witness was given an opportunity before the cross-examination was closed of correcting or altering this answer, if he so desired, and he failed so to do and expressed no desire to change the same.

Counsel for defendant replies that he requests the witness neither to correct nor to alter his answer, but simply to make his meaning a little more clear.

A. If I have answered that question I neglected to say in the same season of the previous year. I mean to say that it was about the same season of the previous year. I understand the season being from three to four months.

183 55 Re-D. Q. When were the words and figures "Sept. 17, 1878, 3 gates of patterns, $14.00," written?

A. They were written September 17, 1878, the same time when my charges for castings for Mr. Kupper were written, and the bill was only included in the bill sent to Mr. Kupper — included castings and patterns with castings specified and patterns specified exactly as it is in my book here.

Counsel for defendant requests the officer to certify that the book referred to by the witness in this examination was inspected both by counsel for complainant and also by the complainant in person.

The officer so certifies.

Recross by JAMES TURK, Esq.:

56 Re-X Q. Referring to the charge of September 17, will you please tell us whether or not the date 1878 is to be found there?

A. I do not think it can be found anywhere else in the book than where it is now relating to Mr. Kupper's account.

57 Re-X Q. Question repeated.

A. I can't give you no other answer than the first time.

58 Re-X Q. Please carefully examine page 6 of the book from which you have testified here to-day and state whether you find the date 1878 anywhere on that page.

A. I cannot say that I see the date 1878, but I think it plain enough that nobody would make a charge of a month of the later part of the year and set it before the previous months, and Mr. Kupper's account continues on the same leaf of the other side.

Counsel for complainant requests the examiner to copy into the record the item on page 6, and which is dated September 17th, as he there finds it.

184 The examiner's clerk makes the copy as requested.

Chls. Kupper.

"Sept. 17. 61 lbs. comp. casting 34	$20 74
3 gates of patterns	14 00
	$34 74

1 ring gate, 1 long lock plate, and 1 catch pattern."

Counsel for defendant, being informed by the witness that the witness will allow said book to be effered in evidence, offers in evidence pages 5 and 6 of said book heretofore referred to by the witness in his testimony and is marked Defendants' Exhibit Jost Account, April 21, 1884, J. A. S., Ex'r.

59 Re-X Q. Will you please read to the examiner from the entry September 17 in Exhibit Jost Account that portion of the entry which was added by you to the original entry?

A. "1 ring gate, 1 long lock plate, and 1 catch pattern," this constituting the three "gates of patterns" charged above what I have quoted. This is merely a specification to see what the "3 gates of patterns" consisted of.

EDMUND JOST.

Sworn before me—

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Thursday, April 24, 1884, at 11 a. m.

185 NEW YORK, *April 24th*, 1884—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel as before.

CHARLES KUPPER, a witness produced on the part of the defendant, being duly sworn, deposes and says:

Counsel for defendant states that this witness has requested him to be allowed to testify through an interpreter, and requests permission from complainant to be allowed to examine this witness by means of an interpreter.

Counsel for complainant cannot consent to an interpreter being used for the reason that it does not yet appear that this witness is unable to speak and understand the English language, and also as it appears from Complainant's Exhibit Headley Record that Charles Kupper was examined as a witness in the case of Roemer *v.* Headley without the use of an interpreter.

Counsel for def't states that he did not attend at any examination in the case of Roemer *v.* Headley and does not know the manner in which any examination in that case may have been conducted, but he is willing to ask the witness a few preliminary questions and also that comp't's counsel ask the witness preliminary questions to make it appear whether his request for an interpreter is proper.

1 Q. Are you familiar with the English language?

A. I understand some, but not all through.

2 Q. How long have you been in this country?

A. Twenty-one years.

3 Q. And how is it that during that time you have not become thoroughly familiar with English?

186 Counsel for def't requests the officer to certify that the witness' attempt to answer the last question has been so un-

satisfactory that the officer has been unable to note down an intelligible answer to said last question.

The examiner certifies that in his opinion the witness is not qualified to give an intelligent answer in English.

By COMPLAINANT'S COUNSEL:

4 Q. Have you been sworn yet in this case?

A. Yes.

5 Q. Were you sworn in the English language?

A. I don't understand what you mean.

6 Q. When you were sworn was English or German spoken to you?

A. In English.

7 Q. Did you testify in the case of Roemer *v.* Headley?

A. Yes.

8 Q. Was an interpreter used in that case?

A. Well, its too bad that I can understand some but not all. (The whole of witness' answer was not intellible to me—the examiner's clerk.)

9 Q. When you testified in Roemer *vs.* Headley did you talk in English or German?

A. I can't understand what you ask me here, but when you show me a lock then I can give you an answer. I understand better. I did some in English and some in German.

It being now plain to def't's counsel that the examination of this witness cannot be carried on without an interpreter — again requests counsel for comp't to allow witness the use of an interpreter, and in case such permission is refused he calls upon the examiner to certify whether the witness shall be allowed an interpreter or not.

187 Counsel for complainant cannot consent to the use of an interpreter for the reason already given, and also because the witness has been sworn in the English language.

Counsel for defendant states that if the examiner allows the witness the use of an interpreter he will request the examiner to administer the oath again to the witness, and this time through the medium of an interpreter.

The examiner questioned the witness and ordered that the witness be examined in English so long as he answers intelligently; when he finds he cannot get along without an interpreter he will swear one in.

Counsel for defendant gives notice that he shall claim the right to correct any and all errors that may be caused by the witness' want of familiarity with the English language, and that he will urge upon the court that defendant should not be bound or prejudiced by any such errors of the witness.

Counsel for complainant recognizes no such right and says that counsel for defendant has the liberty of examining this witness or not as he thinks fit. If he proceeds to examine him he must take the consequences.

10 Q. Please state your name, age, residence, and occupation.

A. Charles Kupper; age, fifty years; I live in Newark, New Jersey; I am a frame and lock manufacturer.

11 Q. Please look at Complainant's Exhibit D 3 in this case and state whether you recognize the construction of lock there shown you.

A. That is a lock that I made.

12 Q. When did you first make it?

A. I made that—I sold some in March, '78.

13 Q. To whom did you sell them in March, '78?

A. To Hedley & Son.

14 Q. How long before selling them did you first start making them?

188 A. Well, I made them about a couple of pieces or so, but that was the first one I sold—I don't know when I made them. I made the first patterns myself. I made them before.

15 Q. Please tell us, as near as you can, when you made the first patterns.

A. Well, as near as I can remember, it was when I made the first things; it was before New Year that I made the first one of them. I don't know exactly the time.

16 Q. Did you make and sell any more locks like Exhibit D 3, in addition to the lot that you sold in March, 1878?

A. Oh, yes; I sold more after that.

17 Q. When you say it was before New Year that you made the first one of them, please state the number of the year that you mean.

A. Well, that's in '78 that I sold them; that must be '77 that I made them.

18 Q. Please look at Exh. D 1 and state whether you recognize that construction of lock.

A. Yes; that is a lock that I made afterwards.

Cross-examined by JAS. TURK, Esq.:

19 X Q. You say that Exh. D 1 is a lock that you made afterwards. Do you mean that you made Exh. D 1 after you made locks like Exh. D 3?

A. I made first Exh. D 3 and then Exh. D 1.

20 X Q. Who made the patterns for the castings like Exh. D 3?

A. The first pattern I made myself in the shop.

21 X Q. When did you make it?

A. Well, the first one I made just as I told you—before Christmas.

22 X Q. Have you ever had any other patterns made?

A. Yes; after that one I made—I don't know exactly how many.

189 23 X Q. Those are all the patterns you have made, aren't they, that you have spoken about?

Objected to as indefinite.

A. What you mean—all the patterns?

24 X Q. I mean all the patterns for castings like Exh. D 3.

A. Now, I'll tell you something else. We have always to make a pattern of casting about three or four times before we make the regular pattern out.

25 X Q. Did you have all of these regular patterns made in your own shop?

A. Well, the first ones were; about two or three; I don't know how many. You did not understand me. I mean the first two or three times.

26 X Q. After the first two or three times where did you have the patterns made?

A. I believe the last pattern make Jost.

27 X Q. You mean by that answer that Jost made the last pattern?

A. Yes.

28 X Q. About when was it that he made this last pattern?

A. I believe that was about—I don't know it; some four or five months after or a little longer; I don't know.

29 X Q. You mean four or five months after you made the patterns yourself?

A. Oh, no; but four or five months after I sold the first lock.

30 X Q. Did Mr. Jost make any castings for you?

A. Oh, he makes always castings for me—so long pretty near I got in business.

31 X Q. Did he make any castings for you from the patterns which you said he made?

A. Yes, sir; I believe that Jost made the castings.

32 X Q. Do you remember of what kind of metal they were made out of?

190 A. The metal that he got in a brass foundry. I don't know what kind of metal he used.

33 X Q. Were they cast iron?

A. Jost has got no iron.

34 X Q. Were they brass?

A. Certainly.

35 X Q. About when did you first make locks like Exhibit D 1?

A. Well, I cannot tell you that.

36 X Q. About how long was it after you made locks like Exhibit D 3 that it was when you made locks like Exhibit D 1?

Objected to as already answered.

A. I can give no answer at all to this now—when I made this.

37 X Q. Do you think that you made it in 1878?

A. I don't know.

38 X Q. Do you know who made the castings for locks like Exhibit D 1?

A. I believe Oscar Barnett made them—the first ones.

CHAS. KUPPER.

Sworn before me—

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Monday, April 28, 1884, at 11 a. m.

NEW YORK, *April* 28, 1884—11 o'clock a. m.

Met pursuant to adjournment.
Present: Counsel as before.
Adjourned to Friday, May 2d, 1884, at 11 a. m.

191 NEW YORK, *May* 2*d*, 1884—11 o'clock a. m.

Met pursuant to adjournment.
Present: Counsel for respective parties.

Mr. JOHN W. LIEB, a witness produced on the part of the defendant, being duly sworn, deposes and says:

1 Q. Please state your name, age, residence, and occupation.
A. John W. Lieb; age, 55 years; I reside in Newark, New Jersey; I am in connection with J. Lagowitz & Company, superintending the manufacture of traveling-bag frames and traveling bags.

Counsel for complainant asks counsel for defendant what will be the general character of the evidence given by this witness.
Counsel for defendant replies that he wishes to establish by this witness prior knowledge and use of the alleged invention here in suit or of substantially material parts of the same.
Counsel for complainant objects to any and all testimony that may be given by this witness proving or tending to prove prior knowledge or prior use on the ground that his name is not mentioned in the defendant's answer, this objection to stand to all such testimony, without repetition.
Counsel for defendant calls the attention of complainant's counsel to the fact that at the last motion day, April 25, 1884, defendant made a motion before his honor Judge Wallace to have the witness' name inserted in the answer, which motion was opposed by complainant's counsel and denied by the court; that defendant now will
192 proceed to take this witness' testimony, and, if so advised, will at the first opportunity make a motion that said witness' name be inserted in the answer, and that the testimony now taken stand as testimony regularly taken herein, and on such motion will show the materiality of this witness' testimony.

2 Q. Did you ever make any improvements in locks for traveling bags or in handles or handle attachments for the same?
A. Yes; I did.
3 Q. Please tell us what it was that you so did?
A. I invented several devices and put them to practical use.
4 Q. Please show us what you did. If you have any devices here to show as illustrations you may refer to them.
A. Exhibit Lieb Lock B, now on file with the clerk of this court; also device Exhibit Lieb Lock A; also the device I now produce.

Counsel for defendant offers in evidence the devices referred to by the witness and also the device produced by him, and the two former are marked Def'ts' Ex. Lieb Lock A and Def'ts' Ex. Lieb Lock B,

J. A. S., ex'r, May 2, 1884, and the device produced by the witness is marked Def'ts' Ex. Lieb Lock C, May 2, 1884, J. A. S., ex'r.

Those exhibits are objected to by complainant's counsel as incompetent and immaterial, and the objection that was made to the evidence of this witness is repeated to these exhibits which have been produced.

5 Q. Please look at Def'ts' Exh. Lieb Lock B and tell us when you first made a device or devices like that exhibit.

A. I commenced making it in the last week of March, 1877, and had it ready for the market about July 1, 1877.

193 6 Q. Did you ever sell devices like Lieb Lock Exhibit B—I mean by that locks or lock cases having on them handle holders the same as the structure Ex. B—and, if so, when first did you sell such devices?

Objected to as leading.

A. The firm of J. Lagowitz & Co. has sold bags with locks and handles attached to them from the middle of the month of July, 1877, and subsequently of the construction as Exhibit B.

The answer is objected to by complainant's counsel as not responsive, and any and all testimony this witness may give showing or tending to show prior knowledge or use by the firm of J. Lagowitz & Co. is objected to on the ground that the name of that concern or the names of the persons who constitute it does not appear in the defendant's answer; this objection also to stand without repetition.

Defendant's counsel repeats his statement and notice with regard to the insertion into the answer of the members of the firm of J. Lagowitz & Co., which is already put on record, with reference to the present witness.

7 Q. When did you first make a device or devices like Def'ts' Exhibit Lieb Lock A?

A. I made it at the same time, together with the device as Exhibit B, and had it ready for the market also at the middle of July, 1877.

8 Q. Were any devices like Exhibit Lieb Lock A sold; if so, at what period or periods?

A. They were sold from the middle of July, 1877, and subsequently.

9 Q. By whom were they sold?

A. By J. Lagowitz & Co.

10 Q. Will you give us the full name of J. Lagowitz, if you can?

A. Jacob Lagowitz.

194 11 Q. Are there any other members in that firm; and, if so, will you name them?

A. There were other members in the firm at that time. Their names are Leopold Haas and Joseph Frankle.

12 Q. Are they of Newark, do you know?

A. No; they were residents of New York. One is dead—Mr. Joseph Frankle—and the other one has ceased to be a member of

the firm since about last November or December, when the firm dissolved.

13 Q. Do you know where he lives?

A. I don't know.

14 Q. When did you make Def'ts' Exhibit Lieb Lock C?

A. I made it during the month of September, 1877.

15 Q. Were any such devices ever sent to customers? If so, please state the time.

A. I have made two pieces of the device, one of which was put in stock with the bags of the two other devices and was sold between the time of making the same and about two months after.

16 Q. These two pieces were both made when? Please state as near as you can.

A. They were made during the month of September, 1877.

17 Q. Why did you not make more of such devices like Exhibit C?

A. Because I did not find them, in my own opinion, as practical as the other two devices.

18 Q. Have you here present any devices showing experiments, if any, you made while getting up devices like Exhibits A and B? If so, please point them out.

Objected to as leading, and as the witness has not testified about making experiments.

A. Here are two articles which were made during the time of April 1st and July 1st, 1877, showing the different stages of process in making the devices of Exhibits A and B.

195 Defendant's counsel offers in evidence the articles produced by the witness and they are marked Def'ts' Exh. Lieb's Experiment 1 and 2, May 2, 1884, J. A. S., ex'r.

The exhibits are objected to by complainant's counsel as irrelevant and immaterial.

19 Q. Please state a little more specifically what Lieb Exh. Experiment 1 illustrates or refers to.

A. Experiment Exhibit 1 refers to Lieb Exhibit A.

20 Q. And Lieb Experiment 2 refers to what?

A. Exhibit Experiment 2 refers to Lieb Exh. B.

21 Q. What does "Pat. Aug. 28, '77," on both Lieb locks A and B refer to?

A. It refers to patents obtained by me for both devices for handle fastenings.

22 Q. Can you give us the numbers and dates of these patents? If so, please give them.

A. Number 194,556; date of patent, Aug. 28, 1877. The other is number 194,555; date of patent, Aug. 28, 1877; both issued to me.

Defendant's counsel offers in evidence certified copies of said two patents, and the same are marked Def'ts' Exh. Lieb 1877 Patent No. 1 and No. 2, May 2, 1884, J. A. S., ex'r.

Counsel for complainant objects to the foregoing exhibits on the ground that they are not mentioned in the defendant's answer, this objection to stand to all the evidence in relation to such exhibits without repetition.

23 Q. How is it that your said two patents just produced do not show locks?

A. Because I have put more importance on the device for the handle fastenings than I did on the device for the locks.

Direct examination of this witness closed.

196 Counsel for the complainant renews the objections which he has already made to the testimony of this witness and declines to cross-examine him.

Counsel for defendant renews the statement and notice already given—that the defendant at the earliest opportunity will move for leave to insert in the answer herein the names of this witness, of Jacob Lagowitz, and of Leopold Haas, and also to insert U. S. letters patent No. 194,555 and 194,556, and that the testimony of this witness and the exhibits introduced by him stand as evidence regularly taken herein.

JOHN W. LIEB.

Sworn before me—

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Monday, May 5, 1884, at 11 a. m.

NEW YORK, *May* 5, 1884—11 a. m.

Met pursuant to adjournment.
Present: Counsel as before.

EDMOND JOST recalled on behalf of the defendant:

1 Q. Have you before testified in this case?

A. Yes, sir.

2 Q. When you last testified you stated in answer 5 that you made lock plates the same as in Exhibit D 1 for Mr. Kupper in the fall of 1877. Please state what you have to say about that.

Objected to, as the witness has been already fully examined on this subject and his testimony closed.

197 A. I said that I made lock plates the same as those in Exhibit D 1 about a year before I charged patterns for a lock-plate pattern, a catch pattern, and a ring pattern, and after looking the patterns over I have found that this Exhibit D 1 was not the plate I made a year before.

3 Q. Which plate was it, then, if any?

A. It was the plate Mr. Kupper had made by me the first time he made long lock plates.

By request of defendant's counsel it is here noted that complainant here appears in person.

4 Q. What did that look like?

A. It was a solid plate, similar to this plate, Exhibit D 3.

5 Q. Have you got any solid plate here to show what the first long lock plate was like? If so, please produce it before the officer.

A. This is the plate. It was the the first one.

The plate produced is offered in evidence and marked Defendants' Exhibit Jost First Plate, May 5, 1884, J. A. S., ex'r.

The offer of the exhibit is objected to as immaterial.

6 Q. When did you first make lock plates like the one in Defendants' Exhibit Jost First Plate?

A. I mixed up the different plates and gave the time of the plate in Exhibit D 1 instead of the time of the plate in Defendants' Exhibit Jost First Plate.

7 Q. And the time when you first made lock plates like the one in Defendants' Exhibit Jost First Plate was, when? Please state as near as you can.

A. It was from nine months to a year before I charged three gates of patterns in my book of 1878—September 17, I think it was.

8 Q. In said charge of September 17, 1878, there are re-
198 ferred to one ring gate, one long lock plate, and one catch pattern. What was the ring gate for?

Same objection as to Q. 2.

A. The ring gate was for those lock plates; the pattern was charged for in September.

9 Q. If the ring gate was for those lock plates, what does the item one long lock plate in said charge refer to? Please point that out.

Counsel for complainant objects to all evidence in relation to Exhibit Jost Account on the ground that it appears from the evidence of this witness heretofore given in this case that the book is not in the same condition that it originally was; that a certain entry, to wit, that of "September 17th," was changed a long time after the entry was made; this objection to stand without repetition.

Defendants' counsel calls attention to the fact that the statement by complainant's counsel as to the entry of September 17th being "changed" is incorrect, as it appears from the witness' former testimony that the words "Sept. 17, 3 gates of patterns, $14.00," were written September 17, 1878, and that merely the words and figures "1 ring gate, 1 long lock plate, and 1 catch pattern" were afterwards added by the witness, as he testifies in his former testimony, A. to Re-X Q. 59 as "a specification to see what the three gates of patterns consisted of," and the accusation of the entry being changed is an unfair treatment of the witness by complainant's counsel.

A. It was for the patterns charged in my book where to make the castings like Exh. D 3.

10 Q. I wish to know what "1 ring ring gate" was for. Please show us for what articles or for the manufacture of what
199 articles the ring gate was used. I refer now to the ring gate alone and not to the lock plate or to the catch pattern.

A. The ring patterns were used and made to make brass castings for the lock plate Exh. D 3 and former lock plates.

11 Q. When you began answering your last question you took into your hand the article I now place before you. Please tell us what that is.

A. It is a pattern of white metal to make the cast rings for long lock plates.

The article referred to is offered in evidence and marked Defendants' Exh. Jost Ring Pattern, May 5, 1884, J. A. S., ex'r.

12 Q. And was the ring gate charged in the entry of Sept. 17, 1878, used for rings like Def'ts' Exh. Jost Ring Pattern or not?

Objected to as leading.

A. The rings were used on the long lock-plate castings I made at the time I made the first lock plates, and it must have been in the winter or fall of 1877.

13 Q. Did you ever make any other lock plates for Mr. Kupper besides Def'ts' Exh. Jost First Plate? If so, please show us what you did in that line.

A. I made some lock plates like this (producing one).

14 Q. When did you make lock plates like the one just produced by you?

A. About from two to four months later than I made the first ones like in Def'ts' Exh. Jost First Plate.

The same is offered in evidence and marked Def'ts' Exh. Jost 2d Plate, May 5, 1884, J. A. S., ex'r.

The offer of the exh. is objected to as immaterial.

15 Q. Please tell us what next you did for Mr. Kupper, if anything, in the line of long lock plates.

200 A. I was ordered, after the second lock plates were found to be too heavy yet, to reduce the pattern and make some more castings of a lighter pattern, and I made them lighter.

16 Q. Can you show us what these lighter plates looked like?

A. They looked exactly like the plate in Exh. D 3.

17 Q. When first did you make plates like the one in Exh. D 3?

A. About three or four months before I charged the patterns for the castings; perhaps not quite as long as the lock plates. Exh. D 3 and the lock plate Exh. Jost Second Plate are nearly alike, and I can say that I made the Exh. Jost Second Plate about from five to seven months before the patterns were charged in my book, and patterns changed constantly.

18 Q. And the patterns were charged in your book when?

A. The patterns for those plates are charged in my book in September, 1878.

19 Q. Did you ever make lock plates like in Exh. D 1 for Mr. Kupper? If so, state, as near as you can, about when first.

Same objection as to Q. 2.

A. I have made lock-plate castings like Exh. D 1, but I am not

sure now, after examining all my books and charges for castings and patterns, whether it was 1878 or 1879.

Cross-examination:

20 X Q. Do you wish to make any other alterations in the testimony that you have already given?

Def'ts' counsel objects to the question unless the witness be first given a chance to read over his testimony, if he wishes it, or any particular question or answer that he may wish.

201 Counsel for comp't replies that the testimony was read over to the witness at the time it was given by him, and that the witness was particularly cross-examined as to the time when he made lock plates like Exh. D 1, and that the witness desired his evidence to stand as he had then given it. He now seeks to alter such testimony, and counsel for comp't submits that the question is an eminently proper one before further proceeding with the cross-examination of this witness.

Counsel for def't replies that the witness has simply corrected a mistake and has explained how he came to make the mistake, and submits that it is perfectly proper for a witness at any time to correct any error he may make without thereby being impeached.

A. I cannot remember that I have said in my last testimony what would be of any importance. If any one has read the testimony over I shall be glad to give an answer if my testimony don't agree with anything said different, as I cannot remember all what I have said at once, except I remember that the testimony given last time in regard to lock plates like Exh. D 1, and I admit I made a great error in the time. After inquiring and finding that those lock plates like Exh. D 1 were not in existence, as far as I know, so I cannot help to have been mistaken in the time.

21 X Q. I understand you to say that you don't now remember all the testimony you have given in the case; am I right?

A. I remember as soon as you read it.

22 X Q. Without its being read over to you again you don't remember it, do you?

A. I remember all.

23 X Q. Then, if you remember all, you can certainly give me a definite answer to 20 X Q. Please do so.

202 Objected to, as said question has already been answered as fully as any witness can answer a question of such a character.

A. I have no other alteration to make regarding the lock plate like Exh. D 1, and what I have said in my former testimony regarding those lock plates would have to be read over in order to give a correct answer.

24 X Q. You are not willing to say whether or not you would like alterations made in your testimony until it has been read over to you again, are you?

Objected to as already answered.

A. I have no reason.

25 X Q. What do you mean by your last answer?

A. I do not know why I should make an alteration, except in regard to the time of lock plate Exh. D 1, already spoken of, as I admitted that I made an error in the time.

26 X Q. In other respects you wish your testimony to stand as you have given it, do you not?

Objected to as already fully answered in the last answer.

A. I have given testimony as close as I could come to it.

27 X Q. Do you know Mr. Roemer, the complainant, who is here present?

A. Yes, sir.

28 X Q. Are your relations with him friendly or otherwise?

Objected to as immaterial.

A. My relations with him are no better and no worse than with anybody else.

29 X Q. Have you been subpœnaed to testify here to-day?

A. Will you please tell what that means? I do not understand it.

203 30 X Q. Has any paper been served on you ordering you to come here to-day to testify on the part of the defendant?

A. No, sir.

31 X Q. Do you do any work for R. Neumann & Co.?

A. Yes, sir.

32 X Q. Have they paid you anything for testifying here?

A. I am not dirty enough to take any money to influence me to give testimony.

33 X Q. Since you testified here the last time in relation to Exhibit D 1 have you talked with any one about the testimony you gave?

A. Yes, sir.

34 X Q. With whom, please?

A. Mr. Kupper.

35 X Q. Please relate the conversation which you had with him, as nearly as you can.

A. I asked him whether he had the pattern of the lock plates I testified about in my last testimony as having been made for him in the fall of 1871—the previous year of 1877. I wish here to say that I desire to correct this, and I will say it over again. I asked Mr. Kupper whether he had the pattern or patterns of the lock plate Exhibit D 1, the testimony given by me to have been made for him nine months or a year, said by me in my first testimony. Mr. Kupper said no, and I found in the conversation regarding long lock plates and the patent suit with Mr. Roemer that I was not right in the time testified to, and that this convinced me that this time relates to the time when the Defendants' Exhibit Jost First Plate was made, and I told and admitted the fact, which Mr. Kupper must testify himself, that I made an error in my statement here in the court. I also spoke to Mr. Flocke, the foreman of Mr. Neumann,

coming to my shop very often for work, that I did not want what I said to stand if I was in error, and so Messrs. Neumann & Co. asked me to correct this error to such an extent as I think is more correct. This is the reason why I am here to-day, and I can
204 earn more money being in my business than to give testimony for anybody, and I want to have it understood that nobody can influence me to testify what I believe is not possible or right; and after this conversation I spent several hours to hunt up the patterns and search through my books of a later date than September 17, 1878, and can't find any item relating to lock plates or three gates of patterns.

36 X Q. When was it Mr. Neumann came to see you?

A. Mr. Flocke came to see me the day after I last testified here, not saying anything about this, but it was I spoke about it, and on the same day I have seen Mr. Kupper also.

37 X Q. How did you happen to speak about it to Mr. Flocke?

A. I often speak to anybody about something and don't know how I come to. I remember now that I said they kept me there till half past four o'clock and I was afraid they would ask me long enough to be obliged to stay all night.

38 X Q. Do you know whether Mr. Kupper has testified in this suit or not?

A. Yes, sir.

39 X Q. How did you find that out?

A. Because the counsel of Mr. Neumann told me that Mr. Kupper was expected the same day I was here last week, which I did not know until I came to New York, and I wished I had seen Mr. Kupper the first time before giving my first testimony, to avoid the error in time of the lock plate Exh. D 1 corrected to-day by me.

40 X Q. Mr. Kupper did not tell you that he had testified for Mr. Neumann, did he?

A. Mr. Kupper told me afterwards, after asking him for that pattern and after he testified that he was here some time ago. He also told me that he could not understand the questions, but he did not tell me what he testified, and I did not ask him what he testified.

Recess taken till 2 p. m.

205 After recess.

41 X Q. When did you first learn that you made a mistake in the testimony you first gave concerning the time when you first made lock plates like Exh. D 1?

A. After looking for the patterns and after I was informed by Mr. Kupper that he did not make any locks at all like the one Exh. D 1 at that time. Of course, I only made the castings and some patterns for him, and do not know what he calls the locks or how many he makes.

42 X Q. Mr. Flocke came to see you before you saw Mr. Kupper or after?

A. I don't know whether I spoke to Mr. Kupper first or to Mr. Flocke.

43 X Q. Were they both there together?

A. No, sir.

44 X Q. Don't you remember about what time of day it was, in the morning or afternoon, that you saw Mr. Flocke?

A. I cannot remember.

45 X Q. Then you don't remember what time of day it was when you saw Mr. Kupper, do you?

A. I think it was in the afternoon the day after I was giving testimony.

46 X Q. Where did you get Def'ts' Exh. Jost First Plate?

A. That plate was not given to me.

47 X Q. Have you ever seen it before to-day?

A. I have seen it often—that means not this plate, but exactly the same plate.

Answer objected to as not responsive.

48 X Q. Have you ever seen this identical plate before?

A. I think I have.

49 X Q. Where?

A. I asked Mr. Kupper whether he had any of the locks with those octagon-cornered plates left and he showed me this one.

50 X Q. Did he tell you anything about it?

206 A. He did not tell me anything about it first, and I said this was the first long lock plate I had made for him, and I also said that I made a mistake in the time, as, if the other plate, Exhibit D 1, were proved by him to be not in existence at all, it was clear to me that this was the plate the time it was first made ought to be given to.

51 X Q. Is this lock plate made out of brass or composition metal?

A. By looking at it I can only see that it is brass or composition—all the same—and is the same as I have made for him.

52 X Q. Who made this?

A. As I made the first ones of these plates and as Mr. Kupper had only one brass foundry to work for him and as I made all his brass castings from 1876 to now, this casting must have been made in my shop.

53 X Q. Were these lock plates like Defendants' Exhibit Jost First Plate made out of any other material than brass or composition?

A. They were only made in brass or composition and never in iron; but I can only depend on Mr. Kupper's answer asking him whether he had any iron ones made, which, of course, I can't know.

54 X Q. When was it he told you that?

A. Last week.

55 X Q. Please give us the earliest date that you can fix positively when you first made plates like Exhibit Jost First Plate for Mr. Kupper.

A. The date I have given in my last testimony. This is the approximate date. I can give you no date to the day. This date is the date for that first plate, as it was in that season or perhaps a little

later when the patterns were charged and after they were altered enough, as I did not make any more alterations on those patterns from that date. It is to be understood that patterns were made long before they were charged, and also castings made.

207 56 X Q. About how long were those patterns made before they were charged, and when were they charged?

A. The time when the patterns were charged is answered already several times—September 17th, 1878. That is all I can depend on. The patterns for the last lock plates like that in Exhibit D 3 were made for the plates like Exhibit Jost 2d Plate, which was at least six months or more before these patterns were charged, and there were not as many that time not complete.

57 X Q. Were those patterns which were charged for September 17, 1878, made in 1878?

A. Yes, sir.

58 X Q. Now, will you please hear the officer read to you your answer to X Q. 55? And state whether or not you desire to make any alteration in that answer.

A. I understand what I have answered and will make no alteration whatever, as I did not say that this Jost first plate was made off the patterns I made. I admit that I made patterns before the time given for the last patterns, but these patterns were finished, as many as there were, by Mr. Kupper. The castings for those patterns were furnished by me and never charged as patterns, and the pattern to make those patterns from again was given to me by Mr. Kupper.

59 X Q. Did you make the plates like Exhibit Jost First Plate before or after you made those patterns?

A. I made plate castings of Jost first plate before I made Jost 2d plate.

60 X Q. Cross-Q. 59 repeated.

A. The question I do not understand relating to the patterns. What do you mean by the patterns, and is it for the first or the second plate?

61 X Q. I mean the patterns that were charged for Sept. 17, 1878, and with this explanation the officer is requested to repeat 59 X Q.

208 A. I made plates like Exhibit Jost First Plate before I made patterns for Exhibit Jost Second Plate.

62 X Q. Then were those patterns that were charged for Sept. 17, 1878, the patterns for lock plates like Defendants' Exhibit Jost Second Plate?

A. Yes, sir; exactly.

63 X Q. Have you ever seen Exhibit Jost Second Plate before to-day?

A. Yes, sir.

64 X Q. When and where before to-day?

A. I went to Mr. Kupper and told him to let me have one of the lock plates or a whole lock, which were made from the patterns before they were altered. He gave it to me. This was last week.

65 X Q. You never made anything but the lock plates for Mr. Kupper, did you?

A. Yes.

66 X Q. What other parts of the lock?

A. I made rings, hasps, and catches, and small rings for those catches on top, also bolts for the inside of locks.

(The witness produces a model when he mentioned catches.)

The model produced is offered in evidence and marked Defendants' Exhibit Jost Catch, May 5, '84, J. A. S., ex'r.

The offer of the exhibit is objected to as irrelevant.

67 X Q. Did you make the boxes for the locks which are on top of the plates in the exhibits you have produced?

A. I did not for Mr. Kupper.

68 X Q. Did you first make plates like that attached to Defendants' Exhibit Jost Second Plate for Mr. Kupper in 1878?

A. They were made during 1878.

69 X Q. In what month were they first made?

A. I cannot remember the month, as they were made about
209 six months before the patterns were last charged; also during to Sept. 17th and after. That means they were made with the patterns made for them first off, and the difference of the two plates, Jost Second Plate and Exhibit D 3, is immaterial or they are the same.

70 X Q. Were all those plates that you made for Mr. Kupper, like Exhibit Jost Second Plate, made out of brass or composition?

A. Yes, sir.

71 X Q. Did you have any of them cast in other shops?

A. No, sir.

72 X Q. Did you have any of the plates like that in Defendants' Exhibit Jost First Plate cast in any other shop?

A. I always had these patterns under my own supervision, and at that time I had very few to work for me, and I remember that I made most of Mr. Kupper's castings myself and never had any brass castings made in any other shop.

73 X Q. Were the plates like that attached to Exhibit D 1 made by you for Mr. Kupper in 1878?

A. Yes, sir; or in 1879; I can't tell; I testified so before.

74 X Q. How do you know that the plates like that attached to Exhibit Jost First Plate were made by you for Mr. Kupper at the time you have sworn they were made?

A. I can give you no answer, but I know they were made then, and I have not seen any made from anybody else of that very shape, and I always had the pattern.

Redirect:

75 Re-D. Q. In your answer to 20 X Q. you state: "After inquiring and finding that those lock plates like Exhibit D 1 were not in existence, as far as I know;" and also in answer to 50 X Q., referring to Mr. Kupper, you state if the plate "Exhibit D 1 were

210 proved by him to be not in existence at all;" do you mean by this that plates like in Exhibit D 1 were never in existence?

Objected to as leading.

A. I do not want to say that, as I don't know it, and I only want to say that Mr. Kupper told me that at the time fixed by me for the first castings I made for him, they, the plates like in Exhibit D 1, were not in his hands at all, and that it was long after when he made the locks, and that I could not get the iron pattern from him at that time.

76 Re-D. Q. What was the article you took in your hand in giving the last answer?

A. This lock-plate casting of malleable iron, brought or sent to me by Mr. Kupper either late in 1878 or early in 1879, and is the very casting and pattern filed by me to be used for a pattern to make brass castings for lock plates from.

The same is offered in evidence and marked Exhibit Jost Malleable Casting, May 5th, 1884, J. A. S., ex'r.

Objected to as irrelevant and immaterial.

77 Re-D. Q. Referring to Def'ts' Exhibit Jost First Plate you state, in A. to 55 X Q., that it was made in that season, or perhaps a little later, when the patterns were charged. Was the charge made in the same season of the same year that the first plates like Exhibit Jost First Plate were made?

Objected to as leading, and as the witness was given an opportunity to change that answer if he so desired, and stated that he would "make no alteration whatever."

Def'ts' counsel says that he does not expect the witness to make any alteration, but simply an explanation.

A. No, sir; if I understand the question right, in the previous year; if I have said so, there is where the mistake is.

211 78 Re-D. Q. Then do I understand you correctly that the charge in your book of Sept. 17, 1878, was made about the same season, but the year after you first made plates like Def'ts' Exhibit Jost First Plate; am I correct or not?

Same objections.

A. Yes, sir.

79 Re-D. Q. In your A. to 69 X Q. you state, referring to plates like Def'ts' Exhibit Jost Second Plate, that they were made about six months before the patterns were last charged; what is that date when they were last charged?

A. They were charged Sept. 17th, 1878; what I mean by last charged is that after undergoing all these alterations, at last I charged them at so much.

80 Re-D. Q. Of what country are you a native?

A. Of Germany.

EDMUND JOST.

Sworn before me—

JOHN A. SHIELDS, *Examiner.*

Adjourned to Wednesday, May 7th, 1884, at 11 a. m.

NEW YORK, *May* 7, 1884—11 o'clock a. m.

Met pursuant to adjournment.
Present: Counsel for respective parties.

Mr. GEORGE B. JENKINSON, a witness produced on the part of the defendant, being duly sworn, deposes and says:

1 Q. Please state you name, age, residence and occupation?
A. George B. Jenkinson; age, 55 years. I reside in Newark, New Jersey. I am a trunk and bag manufacturer.
212 2 Q. How long have you been a trunk and bag manufacturer?
A. Fifty-five years.
3 Q. In your business do you have occasion to use and become familiar with locks and trimmings for satchels, traveling bags, and the like?
A. I do.

The device Defendants' Exh. Roemer Lock Case, which was referred to in the previous testimony for the defense herein and which is on file in this court, is offered in evidence as Def'ts' Exh. Roemer Lock Case, May 7, 1884, J. A. S., ex'r.

4 Q. Will you please look at Defendants' Exhibit Roemer Lock Case or at Complainant's Exhibit D 2, either one, they both being of the same construction, and please tell us whether you know the construction of lock there set forth and whose construction of lock it is.

Objected to as assuming what has not been proved.

A. It is Roemer's lock—these are both Roemer's locks—(witness points to Defendants' Exh. Roemer's Lock Case and complainant's Exh. D 2).
5 Q. Did you ever purchase and use locks of the construction of Complainant's Exhibit D 2?

Objected to as leading.

A. I have purchased these locks for the firm of which I am a member.
6 Q. What is that firm of which you are a member?
A. T. B. Peddie and Company.
7 Q. And their business is what?
A. Manufacturers of trunks and bags.
8 Q. Does your firm, Peddie & Co., now purchase or use locks like Complainant's Exhibit D 2?
A. No.
9 Q. Why not.
213 A. They were too difficult to use, the inside works fre-

quently falling apart and being lost and taking much more time than the ordinary locks to put on.

10 Q. To put on what?

A. On bag frames.

11 Q. Will you please look at the device I now hand you and tell us what it is?

A. It is a bag lock made by the Manhattan Brass Company, and sold to us in February, 1878. The exact date I can give by referring to our books.

Def't's counsel offers said lock in evidence and it is marked Def'ts' Exh. Jenkinson Lock, May 7, 1884, J. A. S., ex'r.

12 Q. Was February, 1878, the first occasion that you saw a device like Def'ts' Exh. Jenkinson Lock?

Objected to as leading.

A. No.

13 Q. When previously did you see a device like that?

A. I think about four months previous to the delivery of these locks to our firm. It was a sample made by hand.

14 Q. And the delivery of these locks to your firm was when?

A. February, 1878; we will send you a copy of the invoice from our books.

Def't's counsel states that on receipt of such invoice he will offer it in evidence as Def'ts' Exh. Jenkinson Invoice.

15 Q. In February, 1878, did you receive one device like Def'ts' Exh. Jenkinson Lock, or a number of such devices?

A. A number; I think thirty or forty dozen.

16 Q. What did your firm do with them?

A. Commenced putting them on bags and selling the bags.

214 17 Q. For what purpose are the transverse slots in the top of Def'ts' Exh. Jenkinson Lock, which are next to the outer rivet holes?

A. To hold the rings to which the handle is attached.

18 Q. Will you please show us, with the aid of such device, the manner in which the slots hold such rings, so that we can understand it?

A. Slipped them in the slot this way (witness inserts the shanks of the clip at the base of the ring into said transverse slot), and separating the shanks and fastening them down with solder.

Cross-examined:

19 X Q. Have you been subpœnaed to testify here to-day?

A. I have not.

20 X Q. Is the lock, Def'ts' Exh. Jenkinson Lock, in the same condition as were those locks which you say were supplied to you by the Manhattan Brass Co. in 1878?

A. It is, and I believe is one of the original locks.

21 X Q. Do you remember seeing this identical Exhibit Jenkinson Lock before to-day?

A. I think this lock I gave Messrs. R. Neumann & Co.

22 X Q. When?

A. Some weeks ago,

23 X Q. And I understand you that this lock is in the same condition as it was in when sold to you by the Manhattan Brass Co.; am I right?

Objected to as already answered.

A. I think it is.

24 X Q. How long have you been a member of the firm of T. B. Peddie & Co.?

A. About ten years.

Adjourned till 2 p. m. to-day.

2 O'CLOCK P. M.

— pursuant to adjournment.

Parties present as before.

215 25 X Q. Was the Manhattan Brass Co. the only concern that made locks like Jenkinson lock for you?

A. The Manhattan Brass Co. was the only company who made them for us. J. Lagowitz & Co. had a similar lock in use several months before we ordered of the Manhattan Brass Co.

All that portion of the answer after the first sentence objected to by complainant's counsel as not responsive.

26 X Q. Have you in stock now any locks constructed like Exh. Jenkinson Lock?

A. No.

27 X Q. Where did you get this lock, Exh. Jenkinson Lock, when you gave it to R. Neumann & Co.?

A. In my office.

At this stage A. V. Briesen, Esq., appears of counsel for complainant.

28 X Q. Have you been sworn as a witness in this cause?

A. Not to-day.

Counsel for defendant calls upon the examiner to certify how it happens that the witness has not yet been sworn, namely, that the examiner, Mr. Shields, was very much engaged in hearing an argument when called upon by defendant's counsel to swear the witness, and that the examiner stated that he would swear the witness afterwards, and that his testimony should be proceeded with.

Counsel for complainant states that the record contains the following entry: "George B. Jenkinson, a witness produced on the part of the defendant, deposes and says." That said record is not correct is now admitted.

216 Counsel for complainant refuses to cross-examine Mr. Jenkinson unless he first swears that he will testify to the truth, and calls upon the examiner to swear the witness now.

Counsel for defendant submits that it is entirely immaterial

whether the witness makes oath to his statements before or afterwards, and states that the witness is ready now or at any time to be sworn and no objection will be made to his being sworn, and again requests the examiner to certify whether his statement first made after cross-answer 28 is true.

The examiner's clerk certifies that defendant's statement after cross-answer 28 is true.

Defendant's counsel requests the examiner to please swear the witness.

The examiner now swears the witness that the testimony which he has given and will give in this case is and will be the truth, the whole truth, and nothing but the truth, and requests counsel for complainant to proceed.

29 X Q. How do you fix the time when you first received locks like Exhibit Jenkinson Lock?

A. By our invoice.

30 X Q. By anything else?

A. No.

31 X Q. When did you last see that invoice?

A. I had seen a copy of it in our invoice book some two or three weeks ago.

Objected to as not responsive.

32 X Q. Question 31 repeated.

A. As our invoices are copied on our invoice book bills are there filed, we holding a true copy. I have not seen the invoice since the month the goods were purchased in, but can produce it.

33 X Q. Who copies your invoices into the book?

A. Our entry clerk.

34 X Q. Please give his name.

217 A. I think our entry clerk's name at that time was David M. Wright; I am not sure; I can give you his name by looking at the book.

35 X Q. Where were you when these first locks were received like Exhibit Jenkinson Lock?

A. Attending to my business somewhere.

36 X Q. Is that as good an answer as you can make?

A. It is.

37 X Q. Did you go to Europe in 1878?

A. I did; I think in May of that year.

38 X Q. Are you sure it was in May?

A. I am not sure whether it was in May or June.

39 X Q. Look at the paper I now show you, which purports to be an affidavit made by you in this cause, and sworn to January 8, 1883, before Henry B. Taylor, notary public, and state whether that is your affidavit.

(Counsel shows witness affidavit on file in clerk's office of this court and filed in this cause January 12, 1884.)

A. It is.

40 X Q. Are the contents of it true to your knowledge?
A. They are undoubtedly so.

Counsel for complainant offers the said affidavit of said Jenkinson in evidence, and the same is marked Complainant's Exhibit Jenkinson Affidavit, May 7, 1884, J. A. S., ex'r.

41 X Q. When did you swear to this affidavit (showing witness said affidavit)?
A. On the day of the date thereof.
42 X Q. Then you swore to it about a year and four months ago, did you?
A. If you give me an almanac I will calculate the exact time for you.

Counsel hands witness an almanac.

218 Witness continues: Sixteen months less one day.
43 X Q. Is it within your recollection, apart from the date which appears on that paper, that you swore to that affidavit about 16 months ago?
A. I think it was about sixteen months ago. I was born in August, 1828. My age may be misstated; I don't stop to figure it up every time.
44 X Q. Did you swear to an affidavit in this cause about four months ago?
A. I am not sure. I have kept a memorandum which I have not with me; by reference to it I can tell.
45 X Q. In your affidavit you state that you have examined a copy of patent No. 208,541, and that you understand the construction of lock described therein. I now show you that patent and ask you to state when you first examined it.
A. I got a copy of it from the Patent Office, I think, about a year after their granting it, which I think I have now in my possession.
46 X Q. Do you understand that Exhibit Jenkinson Lock is a lock such as is described in said patent 208,541?

Objected to as incompetent.

A. I understand that this is a long lock with handle attachments (pointing to Def'ts' Exhibit Jenkinson Lock), not exactly similar to the patent No. 208,541.
47 X Q. Has your firm bought and sold locks like Complainant's Exhibit Infringing Lock, now shown you?
A. We have, a small quantity.
48 X Q. Do you still deal in such locks and use them?
A. No.
49 X Q. Why not?
A. Because we prefer not. I do not think it proper to be called on to state objections why we do not use one class of goods over another.
219 50 X Q. You have deemed it proper to state why you do

not use Mr. Roemer's locks, and I now insist upon your reasons for not using locks like Exhibit Infringing Lock.

A. I think it is because we buy the other lock that we are now using cheaper.

51 X Q. Of whom did you get locks like Exhibit Infringing Lock?

A. The locks that we are using are not exactly like Exhibit Infringing Lock. Some we buy of R. C. Jenkinson & Co. and some of the Manhattan Brass Co.

Answer objected to as not responsive.

52 X Q. Have you not bought locks like Exhibit Infringing Lock of R. Neumann & Co.?

A. We have.

53 X Q. Has Mr. Roemer, the complainant, notified you that you were infringing upon his patent 208,541?

A. He has written us a letter in regard to it, which, I presume, might be called a notice.

54 X Q. Have you had any litigation of any kind with Mr. Roemer, the complainant?

Objected to as entirely immaterial and irrelevant.

A. I have.

55 X Q. When last?

The same objections.

A. A few weeks ago.

56 X Q. Was that a suit brought by you against him?

The same objections.

A. It was.

57 X Q. Was that suit decided in your favor or in his?

The same objections.

A. Verdict: No cause of action.

220 58 X Q. Before you abandoned using Mr. Roemer's locks like Exhibit D 2 did you ask Mr. Roemer to let you have those locks at a less price than what you were accustomed to pay?

A. I do not recollect.

59 X Q. Is it not possible that you did so ask him?

A. It may be, but I think not.

60 X Q. When first did you see a lock like Exh. D 2?

A. I think, when Roemer showed it to me.

61 X Q. What was said at that time?

A. I cannot recollect.

62 X Q. Did he not tell you that this was a new lock and explain it to you and ask you to order some, and did you not order some of him?

A. I ordered some of him, but do not recollect any explanation.

63 X Q. When did Mr. Roemer first show you such a lock?

A. I think, about the time when he first made them. I cannot tell when it was.

64 X Q. Was it in 1877?
A. I think not.
65 X Q. Was it in 1876?
A. No, nor previous to it.
66 X Q. Was it in 1878?
A. It may have been; I am not sure.
67 X Q. May it have been in 1877?

Objected to as already answered.

A. I think not.
68 X Q. Why do you think not?
A. I think not.
69 X Q. Is it because you don't wish to think it was in 1877?
A. I am pretty sure it was not in 1877.
70 X Q. What makes you pretty sure?
A. Because I ordered another lock, which cost more money, previous to seeing his lock.
221 71 X Q. By other lock in your last answer did you mean Exh. Jenkinson Lock?
A. I did.
72 X Q. Did you order any more of these locks like Exh. Jenkinson Lock after having seen Mr. Roemer's lock?
A. I am sure we did.
73 X Q. When last did you buy locks like Exh. Jenkinson Lock?
A. Well, three or four years ago, I think. I can give all these dates from our bills which we have on file.
74 X Q. How were these locks like Exhibit Jenkinson Lock distinguished on the bills from other locks which you bought of the Manhattan Brass Co.?
A. I think by numbers.
75 X Q. Well, tell us just how they were distinguished.
A. We call them at the factory the long nickel lock with handle rings attached.
76 X Q. Is that the way they were called on the bills?
A. I think not.
77 X Q. What were they called on the bills?
A. Bag locks, with some number or figure to distinguish by.
78 X Q. What number or figure were they distinguished by on the bills?
A. I will send an original bill, so as to settle this matter.
79 X Q. I don't ask you to send any bill. I ask you to answer my question.
Question 78 repeated.
A. I do not recollect, but can send the bill so as to satisfy you.
80 X Q. Which are "the inside works" to which your answer No. 9 refers?
A. The inside works are enclosed with a plate and rivetted fast, preventing them from falling out, as in Jenkinson lock, Ex-
222 hibit 1; and in the Roemer lock were loose and continually dropping out and parts being lost.
81 X Q. Is there such an inside work shown in Exhibit D 2?

A. There is no works in them now.

82 X Q. Is there any shown in the patent No. 208,541?

A. The drawing does not show all the works.

83 X Q. Does the drawing of the patent show any more of the works than does Exhibit D 2?

A. No, I think not; but there is more when the lock is put together to be completed.

84 X Q. Where is that hand-made sample to which you refer in answer to 13 Q.?

A. We put it on a bag when we received it and sold the bag. I don't know when. It lay at our place some months before it was sold.

85 X Q. Who showed it to you?

A. J. H. White, president of the Manhattan Brass Co.

86 X Q. Where did he show it to you?

A. I am not sure whether at our office or at his office, but I think it was at his office, at the Manhattan Brass Co., 26th or 28th street and 1st avenue. I think it is 28th street, New York city.

87 X Q. And when he showed it to you, in New York, you kept it and took it over to Newark, did you?

A. We kept it. Whether it was from our office or their's I cannot tell you, but put it on a bag in our place.

88 X Q. How many locks like Exhibit Jenkinson Lock have you bought altogether?

A. I am sure it is in the hundreds of dozens.

89 X Q. And how many like Exhibit D 2 have you bought?

A. I think one hundred dozen or over.

90 X Q. Have you not bought as many as twelve hundred dozen of Mr. Roemer like Exhibit D 2?

A. We may have.

223 91 X Q. When you received these locks like Exhibit Jenkinson Lock from the Manhattan Brass Co., were the handle and rings already fastened to the same?

A. No.

92 X Q. Why has Exhibit Jenkinson Lock but one ring?

A. When we received the locks two rings came with each lock. Our superintendent hunted this lock up at the request of one of the firm of R. Neumann & Co., and handed it to him in this present shape, I being busy when called on at the time.

93 X Q. Did that occur before or after you made that affidavit sixteen months ago?

A. The lock was given Neumann & Co. a few weeks ago. He, I think, had seen it some months ago—probably years ago, for all I know.

94 X Q. Did you testify against Mr. Roemer in the suit brought against Edward Simon & Brothers?

Objected to as indefinite.

A. I gave testimony in the suit between Simon & Roemer.

95 X Q. In behalf of Simon?

A. I testified to the truth, to the best of my knowledge. I was called upon by Simon as a witness.

96 X Q. Did you testify against Mr. Roemer in the suit brought by him against R. Neumann & Co., in New Jersey?

A. I testified in the suit between Roemer and Neumann & Co., in New Jersey. I was called on as a witness by R. Neumann & Co.

97 X Q. Have you not frequently expressed yourself in an unfriendly manner about Mr. Roemer and his suits on patents that were granted him?

A. Not to my knowledge, but Mr. Roemer has spoken about me in a very unfriendly manner on various occasions and wrote a letter to my partner with the intention of injuring me, but when my partner was called upon to testify in court, said, in answer to
224 questions by counsel, Did you think any the worse of Mr. Jenkinson after receiving such letter? His answer under oath was "No."

98 X Q. Shall we understand your last answer to mean that your feelings toward Mr. Roemer are of a friendly or kindly character?

A. I wish to be friendly with all mankind, but expect proper treatment in return.

99 X Q. And you feel, don't you, that Mr. Roemer has not extended proper treatment in return; is that it?

A. Yes; I think he has not.

(Cross-examination closed.)

Redirect:

100 Re-D. Q. Have you allowed yourself, in giving this testimony to-day, to be in any way influenced by Mr. Roemer's conduct?

Objected to as leading.

A. I have given my testimony under oath to the best of my knowledge and the truth as far as I know.

101 Re-D. Q. Referring to your cross-answers 32, 78, and 79, which the examiner will read to you, will you please send over the invoice and bill referred to by you in those answers, so that we can mark them as exhibits in this case?

Counsel for complainant objects to the question as incompetent, and gives notice that, in view of the testimony of this witness, more particularly in view of his answer to cross-question seventy-nine, he will claim the right of further cross-examining said witness with respect to the contents of any paper which he may produce, and he will object to the introduction of any such paper in the absence of evidence explaining the several items which may be inscribed thereon.

A. I will.

225 102 Re-D. Q. Referring to your answers 82 and 83, where you state that the drawing of patent 208,541 does not show all the works, and that Complainant's Exhibit D 2 does not show all the works, I will ask you whether such devices are practical and operative ones.

Objected to as leading and incompetent.

A. No; they are not.

Recross:

103 X Q. Then, if they are not practical and not operative, why did you buy as many as 1,200 dozen?

Objected to as assuming for a fact what the witness has not stated.

A. They were not in the same shape as they are in Ex. D 2.

104 X Q. How do they differ in shape from that exhibit?

A. They do not differ in shape. All the works are not in this Exhibit D 2.

105 X Q. And all the works were in the lock cases like Exhibit D 2 when you got them from Mr. Roemer? Is that what you mean to say?

Objected to as misleading.

A. They were all in the paper or lock cases; sometimes they would fall out.

GEO. B. JENKINSON.

Sworn before me—

JOHN A. SHIELDS,
Examiner, &c.

Counsel for complainant asks counsel for def't to admit that the affidavit of Mr. Jenkinson, which is marked Exh. Jenkinson Affidavit, was sworn to in 1884 and not in January, 1883.

Counsel for defendant informs counsel for complainant
226 that he was not present at the drawing up and signing and swearing to said Exh. Jenkinson Affidavit and cannot know, as a fact, when it was signed and sworn to, but his impression is that it was sworn to January 8, 1884, as the bill herein was not filed until November 13, 1883, and that the figures "1883" in said Jenkinson affidavit are a clerical error, and should be 1884.

Adjourned to Monday, May 12, 1884, at 11 a. m.

NEW YORK, *May 12th*, 1884—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel as before.

CHARLES KUPPER, a witness called on the part of the defendant, being duly sworn, deposes and says:

1 Q. Have you testified before in this case?

A. Yes, sir.

2 Q. You know Edward Jost, do you?

A. Yes, sir.

3 Q. Please look at Defendants' Exhibit Jost First Plate and tell us whether you recognize that device; and, if so, whose make is it?

A. I made that myself.

4 Q. Who is the inventor of that device?

Objected to as incompetent.

A. I am.

5 Q. When did you first make a lock like in that Exhibit Jost First Plate, if at all?

A. I made one lock before Christmas, 1877. I don't know whether I made one or two.

6 Q. What next, if anything, did you do in making locks with long plates?

227 A. I changed it always to make lighter castings.

7 Q. Please show us by any device, if you can, how you made lighter castings.

A. Those are my locks all along (pointing to Defendants' Exhibit Jost Second Plate and Complainant's Exhibit D 3).

8 Q. When first did you make a lock like Defendants' Exhibit Jost Second Plate, if at all?

A. I made that right after that first one. I cannot tell you the time; it is one right after the other.

9 Q. In referring to Defendants' Exhibit Jost First Plate, you say "you made one lock before Christmas, 1877." Now, can you not tell us about when you first made a lock like Defendants' Exhibit Jost Second Plate?

Objected to as leading and as already answered.

A. I cannot give you the time.

10 Q. Whose invention is the device Jost Second Plate?

Objected to as incompetent.

A. It is mine.

Cross-examination:

11 X Q. How do you know that you made Defendants' Exhibit Jost First Plate?

A. That is my lock. I know it.

12 X Q. Are there any other locks in the market like that which are made by other people than yourself?

A. I see no locks like them.

13 X Q. You say in answer to question 5 that you made one or two locks like Defendants' Exhibit Jost First Plate before Christmas, 1877; those were the first locks that you ever made like that exhibit, were they not?

A. I believe that was the first lock that I made that was like that.

228 14 X Q. Was that lock the same shape as Defendants' Exhibit Jost First Plate?

A. Yes.

15 X Q. Was the plate which was in that lock and which corresponds to the plate in Defendants' Exhibit Jost First Plate made out of cast metal?

A. I believe so, but I don't know for sure.

16 X Q. What kind of metal was that plate made out of?
A. It was the same metal as this here—brass metal.

(Witness pointed to the plate in Defendants' Exhibit Jost First Plate.)

17 X Q. Can't you fix the time definitely when you first made locks like Defendants' Exhibit Jost First Plate? Can't you come any nearer to it than by saying it was before Christmas, 1877?
A. No; I cannot do it particularly.
18 X Q. Who made the first casting that you had made like the plate attached to Defendants' Exhibit Jost First Plate?
A. Jost made that casting.
19 X Q. What became of that lock which you say you had made before Christmas, 1877, like Defendants' Exhibit Jost First Plate?
A. I don't understand what that means.
20 X Q. I want to know whether you kept it in your shop or whether you sold it or whether you lost it or what you did with it.
A. I did not sell one lock; I kept it there.
21 X Q. Is it there now?
A. I don't know if the first lock is there or not. I showed it to my customers.
22 X Q. Why didn't you have more than one or two of those locks made before Christmas, 1877?
A. I made always a couple of castings and tried to make one or two locks out of it.
229 23 X Q. Who made the castings for those one or two locks which you had made before Christmas, 1877?
A. I believe Edward Jost made them.
24 X Q. Are you sure that he made them?
A. Yes.
25 X Q. How do you know that he made them for you?
A. I believe that was the only man who made brass castings for me.
26 X Q. And those one or two locks both had brass castings then, did they?
A. Yes, sir; they had brass castings.
27 X Q. Did any one else make castings for you at that time?
A. I believe not—not brass castings.
28 X Q. After those one or two locks did you ever have any other locks made like Defendants' Exhibit Jost First Plate?
A. After I changed those locks I made them of different shape.
29 X Q. Have you ever seen this identical lock which is attached to the card marked Defendants' Exhibit Jost First Plate before to-day?
A. That is a lock that I made. I don't know what you mean by that, but I don't know about before to-day. I don't understand what he means.
30 X Q. You never made more than one or two locks which were just like this Defendants' Exhibit Jost Plate, did you?
A. I cannot tell you that; how many I make I don't know.

31 X Q. Do you sell locks at the present time just like Defendants' Exhibit Jost First Plate?

A. I don't know how many I make, and I don't know whether I sell them or them first or second. (The witness pointed to Defendants' Exhibit First Plate and Jost Second Plate, respectively.)

32 X Q. Which lock did you make first, Defendants' Exhibit Jost Second Plate or Exhibit D 3?

A. This is the first time (pointing to Defendants' Exhibit
230 Second Plate), and afterwards I made it wider (pointing to the long slots in the plate of Exhibit D 3).

33 X Q. When did you first make locks like Defendants' Exhibit Jost Second Plate? Give us the date as near as you can.

A. I cannot do that. I can give you no date to it.

34 X Q. When did you first make locks like Exhibit D 3? Give us the date as near as you can.

Objected to as already answered and as not cross-examination.

A. I cannot give you the date on this. I made one right after the other (referring to Defendants' Exhibit Jost Second Plate and Exhibit D 3). This is the last (pointing to Exhibit D 3).

35 X Q. Was it in 1878 when you first had locks made like Exhibit D 3?

Same objections.

A. That must have been 1878 that I sold them.

36 X Q. Did you have them made in 1878, too?

Same objections.

A. Certainly I had them made.

37 X Q. Were the first locks that you had made like Defendants' Exhibit Jost Second Plate also made in 1878?

Objected to as already answered.

A. Yes, sir; in 1878.

38 X Q. Who made the castings for those locks like Exhibit Jost Second Plate?

Same objection.

A. I believe the casting make — Jost.

39 X Q. You mean by your last answer that Jost made those first castings, don't you?

A. Yes.

40 X Q. Were they brass castings?

A. Yes, sir.

41 X Q. Did any one else make any castings for locks like
231 Defendants' Exhibit Jost Second Plate for you?

A. I believe no castings. I sent some by Meeker. I don't know what kind of lock I sent there. Then I make different kinds of patterns.

42 X Q. I understand you to mean by your last answer that Meeker used to make castings for you from patterns that you sent him. Am I right?

A. I don't know that Meeker made me brass castings. It can be a couple of them.

43 X Q. Did he make any other castings for you besides brass castings?

A. He made iron castings a long time before, I believe—a couple of years before.

44 X Q. Before what time?

A. I believe it was 1874 or 1875 or 1876. I don't know.

45 X Q. Did Meeker make any iron castings for you in 1878 like Defendants' Exhibit Jost Second Plate?

A. I don't know for sure when he made any. He made a couple of pieces. I cannot tell that.

46 X Q. Have you been to see Mr. Meeker lately to find out when he first made these castings for you?

A. No; I see him a couple of years ago.

47 X Q. Haven't you seen him within a year?

A. I don't know how long it is since I see him.

48 X Q. Have you been to his place to see about the time when he first made these castings for you?

A. I was one time there; yes.

49 X Q. When was that?

A. That was long ago. I don't know when that was.

50 X Q. Was that within a year?

A. Oh, well, it was more than that.

51 X Q. What did you find out from that?

A. What kind of locks he made me at that time.

52 X Q. What kind did he tell you he made for you?

A. He told me not what kind.

232 53 X Q. Did you see Mr. Meeker himself there?

A. No.

54 X Q. Who did you see there?

A. I see a man there; I believe a book-keeper.

55 X Q. Did you ask him what kind of locks Meeker made for you in 1878?

A. I don't know if it was 1878 or after that Meeker made me those locks. If I said before that he made castings for me in 1878 it was a mistake. I am not certain if it was 1878 or after.

Answer objected to by defendant's counsel as not responsive.

56 X Q. Who else besides Meeker and Jost made castings for you in 1878?

Objected to as indefinite.

A. What kind of castings do you mean?

57 X Q. Who made your brass castings in 1878?

A. Jost made them without a couple of pieces somewhere else. I don't know.

58 X Q. Who made iron castings for you in 1878?

A. Ballard and Oscar Barnett.

59 X Q. Did you have any iron castings for locks like Exhibit D 3 made in 1878?

A. I believe not. I am not sure.

60 X Q. When did you have those iron castings made, if at all?

A. I don't know what "if at all" means.

61 X Q. Did you ever have any iron castings for locks like Exhibit D 3 made?

A. I don't know for sure if I make some from iron.

62 X Q. Did Oscar Barnett ever make any castings for you like Exhibit D 3?

A. I don't know if he make some like this kind. I believe that he made some for other kinds of locks.

63 X Q. Have you been to see Oscar Barnett recently to find out when he first made locks for you, and what kind of locks he made?

233 A. I see him, but he don't know what kind of lock it is, but he made some, but I don't know what he made.

64 X Q. Did he know when he first made locks for you?

A. Well, he got a couple of patterns there. I believe he made them in 1878.

65 X Q. When you went to see Oscar Barnett, didn't he open his books and show you the date when he began to make castings for you?

A. Yes; he got a book there.

66 X Q. What date did that book show?

Objected to as immaterial.

A. I believe it was January or February, 1878. I am not sure.

67 X Q. Didn't he show you a sample of the castings which he first made for you?

A. No; he got no samples there.

68 X Q. Didn't you show him a pattern and ask him if he didn't make a casting like that for you?

A. I showed him different kind of locks.

69 X Q. Were the ends of the first locks like Exhibit Jost Second Plate of the same shape as the ends of the lock which constitutes that exhibit?

A. That is another shape. (Witness takes in his hand Defendants' Exhibit Jost First Plate and Defendants' Exhibit Jost Second Plate.)

Defendant's counsel objects to the answer on the ground that the witness has evidently not understood the question.

70 X Q. You have testified that you made locks like Exhibit Jost Second Plate in 1878; did those locks have the same shaped ends as Exhibit Jost Second Plate has?

A. Yes.

71 X Q. You have testified that you made locks like Ex-
234 hibit D 3 in 1878; were the ends of those locks of the same shape as the ends of the lock Exhibit D 3?

A. Yes, sir; they were same kind of ends.

72 X Q. None of them had ends the same shape as the ends of Exhibit Jost First Plate, had they?

A. That is another shape.

A. v. Briesen, counsel for complainant, now appears to continue the cross-examination.

73 X Q. What is the difference between Exhibit Jost First Plate and Exhibit Jost Second Plate?

Objected to, as the exhibits speaks for themselves.

A. It is another shape; one is a little longer.

74 X Q. Any other difference?

A. Exhibit Jost Second Plate is open and the other one is not.

75 X Q. When did you first make such a thing as Exhibit D 3?

Objected to as already answered and not cross-examination.

A. I made them three locks, one after the other. I don't know when (pointing to Exhibit D 3, Exhibit Jost First Plate, and Exhibit Jost Second Plate).

75 X Q. Who made the castings for these locks?

A. Jost.

76 X Q. Did not Oscar Barnett make some of them for you?

A. I believe Oscar Barnett made another lock.

77 X Q. Did not Oscar Barnett make the casting for Exhibit D 3?

A. I believe not.

78 X Q. Did you give testimony in November, 1881, before Mr. Patterson, in the case of Roemer against Headley? I now show you pages 23 and 24 of the printed record in that suit.

Objected to as already answered.

A. Yes; I believe so.

235 79 X Q. Did you state the truth in that testimony?

A. What is truth?

80 X Q. Was what you said in that testimony true or not?

A. For sure.

81 X Q. Please look at lock marked Exhibit D 4, W. P., examiner, Oct. 21, '81, which I now show you, and state what you know about such locks.

A. I made this kind of lock a long time before I made them (pointing to Exhibits Jost First Plate, Jost Second Plate, and D 3).

82 X Q. How long before?

A. I cannot tell you how long before.

82 X Q. Which is the first lock you used on top of a bag frame?

Objected to as indefinite.

A. This kind (pointing to Exhibit D 4).

84 X Q. How long did you use this kind?

A. I used it a long time. I use it now.

85 X Q. Are you in business for yourself?

A. Yes, sir.

86 X Q. Since when have you been in business for yourself?

A. I believe about from 1871 to 1872.

87 X Q. And did you make bag locks right after you started for yourself?

A. Yes, sir.

88 X Q. Like Exhibit D 4?

A. No, sir.

89 X Q. Then Exhibit D 4 is not the first lock you used on top of a bag frame, is it?

A. On the top of a bag frame, yes, sir; it is the first lock I used.

Counsel for complainant now offers in evidence lock marked Exhibit D 4, and the same is marked Complainant's Exhibit D 4, May 12th, 1884, J. A. S., ex'r.

236 90 X Q. Please look at lock marked Complainant's Exhibit Headley Lock, and state whether you made locks like that.

Question objected to, as said Exhibit Headley Lock was shown, on the motion for preliminary injunction on January 12th, 1884, to be a device which was gotten up by the complainant, William Roemer, in person.

Counsel for complainant calls the attention of the court to the evident intention to prompt the witness under cover of an objection, and protests against such objection.

Counsel for defendant denies any such intention and denies that his objection is calculated to prompt the witness, as alleged.

A. That is not mine. I did not make this lock.

91 X Q. Please look at Exhibit D and state whether you made that lock.

A. That looks so, but I can't see inside.

92 X Q. You mean that it looks like one of your make?

A. Yes; outside.

93 X Q. Did you sell to Albert O. Headley the locks which were complained of in the suit of Roemer against Headley as being an infringement of the patent No. 208,541?

A. Yes; I sold a lock that looks like that (pointing to Exhibit D).

94 X Q. Look at the paper which I now show you (showing witness affidavit dated January 10th, 1884, signed by Charles Kupper and sworn to before W. Hauff, notary public, and on file in the clerk's office of this court since January 12th, 1884) and state whether that is your affidavit.

Objected to unless the witness be given opportunity to read such paper.

A. That is my name in my hand (pointing to the signature).

237 Counsel for complainant offers said affidavit in evidence, and the same is marked Complainant's Exhibit Kupper Affidavit, May 15th, 1884, J. A. S., ex'r.

95 X Q. Have you ever read that affidavit?

A. No, sir.

96 X Q. Did any one read it to you?

A. What do you mean, my name?

Counsel for defendant objects to cross-questions and answers 95 and 96, as it is plain that the witness has not understood said questions.

97 X Q. Why did you sign your name to that affidavit?

A. He read it to me before, what it was; I think so; I don't know. When I put my name down he read to me what it was.

98 X Q. Who read it to you?

A. I don't know where it comes from; I don't understand.

99 X Q. Where do you live? Give the name of the street and the number of the house.

A. In Newark, N. J.; 45 Mercer street.

100 X Q. When did you move into 45 Mercer street?

A. I don't know; it is two or three years.

101 X Q. Where did you live before that?

A. In Court street.

102 X Q. What number?

A. I don't know exactly the number.

103 X Q. Where did you live before that?

A. In West street.

104 X Q. What number?

A. I don't know the numbers there.

105 X Q. How long did you live in Court street?

A. I don't know; for six or ten years. I lived there a long time.

106 X Q. Where is your place of business?

A. Mulberry street, No. 15.

107 X Q. How long have you been there?

238 A. I believe, from seven to ten years; I can't tell exactly.

108 X Q. Did you make locks like Exhibit D 3 in 1878?

A. Yes, sir; I made them in 1878.

109 X Q. Did you in 1879?

A. I believe I made some in 1879, too.

110 X Q. Did you in 1877?

A. I made about one or two pieces, I believe.

111 X Q. How do you fix the time when you made locks like Exhibit D 3?

A. I cannot tell you just the time; I made them all together, pretty near.

112 X Q. How do you know it was during any particular time that you made these locks?

A. I can't give any particular time for that; I cannot do it.

113 X Q. When was Exhibit Jost First Plate made—this one?

A. I cannot tell you this one, but this shape, I know that.

114 X Q. I notice that in Exhibit Jost First Plate there are no holes in the side of the lock. Why did you make them like that?

A. I can put the holes in, not before; I must put it in before. This lock is no hole in. That can be a mistake by the hands that put that one. That is the reason that I carried it in the shop—around.

115 X Q. The castings Jost made for you were all made of brass, were they?

A. Yes, sir.

116 X Q. Is there brass castings on Exhibit D?

A. What I am at is iron and brass, too.

117 X Q. Who made your iron castings?

A. Oscar Barnett and Ballard.

118 X Q. When did Oscar Barnett first make such castings for you?

A. I don't know when he made castings for me. He has made them for a long time—he has made them for a couple of years—but I don't know whether he made this casting (pointing to Exhibit D).

239 119 X Q. When did you first make a lock like Exhibit D?

A. I cannot tell you all that in my head now here to-day when I make these things.

120 X Q. When was it you called upon Barnett last?

A. It was over in my shop, about a couple of weeks ago.

121 X Q. Are you still making locks like Exhibit D?

A. Yes; I make some.

122 X Q. Just like that exhibit?

A. Like on the outside. (The bag is now opened and the witness says:) It is like that (pointing to the case).

Defendant's counsel states that in giving his last answer witness placed his finger on the exterior of the case of Exhibit D, and objects to X questions and answers 121 and 122 as an improper attempt to involve the witness in difficulties in view of the case of Roemer ag'st Headley, hereinbefore referred to.

123 X Q. Do you make them like this exhibit?

Same objection.

A. I make the box so, but the plate that I make has another shape.

(Question and answer related to the Headley lock.)

124 X Q. Are the plates that you make like this in appearance?

Same objection.

A. Yes, sir.

125 X Q. Was it more than two weeks ago when Oscar Barnett showed you his book?

A. He—I was there for two weeks or three or four weeks. I don't know.

126 X Q. Why did you go there?

240 A. I got nothing to do with him.

127 X Q. Is that why you went there?

A. I was not there; he was at my shop.

128 X Q. And did he bring his book to your shop?

A. Yes; he got a book there.

129 X Q. What did he say?

A. He asked me if I got some pattern from him that he sent me back.

130 X Q. Is that all?

A. That is all.

131 X Q. What did he say when he showed you the book?

A. He said he makes a couple of pieces of pattern or casting if I got them patterns that he sent me.

132 X Q. Do you still make locks and plates like Exhibit D 1?

Objected to on the same grounds as to questions 121 and 122.

A. Yes, sir; that looks like some that I make.

133 X Q. Do you still sell them to Headley?

Same objection.

A. Yes.

134 X Q. When last did you sell him locks like Exhibit D 1?

A. I cannot tell you now when I sold him the last ones.

135 X Q. Was it during this year that you sold him some like Exhibit D 1?

A. No; I stopped it at the time of the suit of Roemer ag'st Headley.

136 X Q. Why did you make locks for Headley like Exhibit D and not like Exhibit D 3?

A. This is the same (pointing to Exhibit D and Exhibit D 1).

Answer objected to as not responsive.

137 X Q. (Question repeated.)

A. That is a different kind of a lock—that is all.

241 Cross-questions 136 and 137 objected to as not being what the witness has stated.

138 X. Q. How are they different?

Objected to, as the exhibits speak for themselves.

A. Every man can see that they are different kind of locks.

139 X Q. Can't you tell us how they differ?

Same objection, and as an evident attempt to annoy the witness.

A. Yes, sir; I sometimes make one of brass and the other of metal.

140 X Q. Did you make them like Exhibit D of brass?

A. Certainly; yes, sir.

141 X Q. And who made those brass castings for you like Exhibit D?

A. I don't know who made the first.

Counsel for complainant asks counsel for defendant to show him the book produced by Jost.

Counsel for defendant states that he has offered in evidence two pages of the book produced by Jost, and he has no objection to submit said two pages to the inspection of the other side; but at the last examination of the witness Jost the complainant, William Roemer, stated that he would claim the right to examine through the whole book; and counsel for defendant calls upon counsel for complainant not to permit his client, the complainant, such im-

proper examination of the affairs of Jost, with which complainant has no concern, and also objects to any reference to Jost's book in the examination of this witness as irrelevant and not cross-examination.

Counsel for defendant produces the book, as complainant's
242 counsel has informed him that the remainder of the book is to be offered in evidence as complainant's exhibit and not as defendant's exhibit, but without waiving any right of objection or any other right in relation to said book or its use in this examination, and now hands counsel for complainant said book.

142 X Q. Were you present when Mr. Jost entered in his book the matter inscribed on the fourth and fifth lines of page 6 of Jost's account?

Objected to as indefinite, it not appearing which lines complainant's counsel calls the fourth and fifth lines.

A. No; I see never the book; I not look in other shops' books.

Counsel for complainant now offers in evidence all of Jost's book, excepting pages 5 and 6, and said book is marked Complainant's Exhibit Jost Account Book, May 12th, 1884, J. A. S., ex'r.

Objected to as incompetent, immaterial, and irrelevant.

143 X Q. How long did you have dealings with Jost?
A. I believe so long as I used brass castings.
144 X Q. What kind of brass castings?
A. All kinds that we used for the frame of the bags.
145 X Q. What castings of brass do you use on the frame besides the lock castings?
A. I use different kinds. I use catches. I use different kinds of castings.
146 X Q. The first casting he made like Exhibit Jost First Plate, was that called long-lock plate?
A. Well, he called not the first long-lock plate. I don't know if he called it lock plate. I don't know what he called it.
243 147 X Q. Do you know how that pencil sketch got on page 7 of Jost's book?
A. No; I don't know what he put in the book. How can I know that?
148 X Q. Do you recognize that sketch on page 7 as representing any of your articles?
A. I don't know what you mean exactly. I cannot tell.
149 X Q. Do you remember speaking to Mr. Jost about Roemer having threatened to sue you?
A. I speak to him when he made them, but not to Roemer.
150 X Q. When was that?
A. Well, I don't know when it was.
151 X Q. About a year ago?
A. It must be as long as that.
152 X Q. As much as two years ago?
A. I cannot tell how long it is.

153 X Q. Is it as much as three years ago that you talked to him about it?

A. I cannot tell you when it was.

154 X Q. As much as four years ago?

A. I cannot tell you about it.

155 X Q. Did Roemer threaten to sue you?

A. Not me.

Counsel for complainant asks counsel for defendant to state what has become of that much of Jost's book as was contained between pages 70 to 99, which pages now appear to have been cut out, and which were not cut out when the book was first produced.

Counsel for defendant calls attention to the fact that complainant's counsel, as appears from his last statement, is fully aware that said pages were not cut out when the book was first produced, and further states that when he was informed on April 22d, 1884, that the witness, Edmund Jost, would allow the book to be offered in evidence, said Jost gave such permission on condition that he be allowed to remove said pages from the book because he had
244 occasion to refer to them in his business, and said pages were thereupon removed by said witness Jost from said book in the presence of counsel for complainant and without any objection on the part of complainant's counsel.

Mr. Turk, who represented counsel for complainant during the examination of Edmund Jost and who was the only representative of complainant's counsel at that examination, states that when the witness was examined in relation to the book and when pages 5 and 6 were offered in evidence none of the pages were missing from the said book; that when the book was produced at subsequent examinations all those portions of the book, excepting pages 5 and 6, were tied up so that their contents could not be inspected by counsel for complainant, and he did not know until to-day, when the cords which held those portions of the book together were taken out, that any pages were missing from the book, and he further states that he did not see any of the pages cut out from that book.

Counsel for defendant calls attention to the fact that the examiner's clerk was also present at such removal of the pages, and that the pages of the book not offered in evidence by the defendant were tied up, because as soon as said book was produced the complainant, William Roemer, started examining and looking through the whole book without regard to the fact that the whole book had not been offered in evidence.

Counsel for complainant also inquires of counsel for defendant why the sheet containing pages 119 and 120 has been spirited out of said book.

Counsel for defendant does not know why, how, or when
245 said sheet was removed from said book, if at all, and has no recollection of having previously noticed such alleged removal until it was just now called to his attention by complainant's counsel.

Counsel for complainant protests against the mutilation of said book and calls the attention of the court thereto.

Counsel for defendant states that said protest comes too late, as in regard to pages 70 to 99, which were removed in the same room in which the examination is now going on such, protest should have been made at the time of their removal, there being no concealment about such removal.

Counsel for complainant calls attention to the fact that the removal was made in the absence of complainant's counsel and complainant and behind their back, and that it explains the statement following complainant's demand for the book made to-day.

Counsel for defendant denies that such "removal was made in the absence of complainant's counsel and the complainant and behind their back," and denies the imputation contained in the last statement, as it appears that as soon as defendant's counsel was informed that the remainder of the book, excepting pages 5 and 6, were to be introduced as complainant's exhibit he at once produced such book.

156 X Q. Do you mean to swear that Mr. Roemer never told you he would bring suit against you for making locks like Exhibit D 1?

A. Certainly, he was in the shop and told me that I could not make this lock, and then he sues Headley, and then I stops to make them.

157 X Q. And was it after Roemer told you that that you went to Jost and asked him when he made these castings for you?

246 A. Yes; at pretty near the same time.

Cross-examination closed.

Redirect:

158 Re-D. Q. Did Meeker make any castings for you before 1878?

A. Oh, yes; long before.

Recross:

159 Re-X Q. What kind were they?

A. Keys and trimmings.

CHAS. KUPPER.

Sworn before me—

JOHN A. SHIELDS, *Examiner.*

Complainant's counsel now requests defendant's counsel to place the book, "Jost account book," into the hands of the examiner, and he does so.

Adjourned to Wednesday, May 14th, 1884, at 1 p. m.

247 GEORGE B. JENKINSON recalled as a witness on the part of the defendant:

1 Q. Have you before testified in this case?

A. I have.

2 Q. Will you please look at the paper I now hand you and tell us what it is and what it relates to?

A. It is a bill of the Manhattan Brass Co., under date of February

21st, 1878, for 12 dozen extra railroad locks, similar to Defendants' Exhibit Jenkinson Lock.

Defendant's counsel offers in evidence the bill referred to by witness, and the same is marked Defendants' Exhibit Jenkinson Bill, May 14th, 1884, J. A. S., ex'r.

3 Q. And you received locks like Defendants' Exhibit Jenkinson Lock from the Manhattan Brass Co. when?

A. On the date of the bill presented (Defendants' Exhibit Jenkinson Bill).

4 Q. Who are Messrs. T. B. Peddie & Co. mentioned on Defendants' Exhibit Jenkinson Bill; is that your firm?

A. At that date the firm consisted of T. B. Peddie, George B. Jenkinson, and Robert Dod.

5 Q. The George B. Jenkinson mentioned in your last answer is yourself, is it?

A. It is.

Cross-examination:

6 X Q. Where did you get this paper, Defendants' Exhibit Jenkinson Bill, from?

A. From a box dated 1878, in which T. B. Peddie & Co. keep their invoices and bills.

7 X Q. Can you tell me what the letters R. W. C., which appear in pencil on that bill, mean?

A. They are the initials of R. W. Chapman, a foreman in that department who received the goods, and the R. W. C. are the evidence to us, T. B. Peddie & Co., of the goods being received.

248 8 X Q. Is that the only evidence you have that the goods were received?

A. The other evidence of the goods being received was when the bill was audited by myself, between the 1st and 20th of the month following, which I recognize by the marks on the bill.

9 X Q. To what marks do you refer?

A. The marks in front of the total amount. (Witness points to the pencil marks immediately in front of the figures "5400.")

10 X Q. Then why did you say, in answer to question 7, that the initials R. W. C. are the evidence of the goods being received?

A. Because that is his instructions, and he does not put the initials on until after having received the goods and counted and examined them.

11 X Q. Did you see these goods to which you say Jenkinson bill relates, when they were delivered?

A. I saw them shortly after they were delivered—not more than one day after they were delivered.

12 X Q. This bill, Exhibit Jenkinson Bill, does not appear to be receipted. Can you tell us why it has not been receipted?

A. Yes; the Manhattan Brass Co., as most other parties that we deal with, send us monthly statements which we pay after checking the bills, seeing that they correspond; then we send check by mail and get separate receipts for each month's transaction.

13 X Q. How many bills did you receive from the Manhattan Brass Co. in 1878?

Objected to as immaterial.

A. I can't tell without counting from our books; we get quite a number monthly.

14 X Q. Is this bill which you have produced to-day the first bill from the Manhattan Brass Co. to your firm for Exhibit R. R. Locks?

A. It is, to the best of my knowledge.

249 15 X Q. And you swear that before the date of this bill no locks marked or billed Exhibit R. R. Locks were received by you from that concern?

A. One sample lock with that bill.

16 X Q. And what does Exhibit R. R. Lock mean?

A. The title given to this lock (Defendants' Exhibit Jenkinson Lock) by the manufacturer.

17 X Q. How do you know that that is the title of that lock?

A. Because they were so billed to us by the manufacturer.

18 X Q. Did you know on 7th of May, 1884, the day you last testified here, that locks like Exhibit Jenkinson Lock were given the title Exhibit R. R. Lock?

A. I knew they were giving some title or mark, but did not know that they were called Exhibit R. R. Locks until I looked at the invoice book and hunted up the bill.

19 X Q. How did the bill tell you what particular kind of lock it referred to?

A. The price was my main guide, and having received others afterwards, several bills, and having given orders for such locks, I am positive that those are the locks referred to in that bill. (Points to Defendants' Exhibit Jenkinson Lock.)

20 X Q. Did you look at your orders recently?

A. I have not.

21 X Q. Did you see other bills recently for Exhibit R. R. Locks besides the one you produced?

A. I have not, but have seen copies of them on our invoice book.

Last part of answer objected to as not responsive.

22 X Q. Did you examine more than one invoice book recently for that purpose?

A, I did.

23 X Q. How many did you so examine?

A. Two.

250 24 X Q. And they, in connection with the bill you produce, satisfied you that this bill refers to locks like Exhibit Jenkinson lock; is that it?

A. Yes.

Counsel for complainant calls for these invoice books.

25 X Q. Did you pay the price, $4.50 per dozen, for only one style of lock?

A. I think at that time it was only that style, $4.50, from the Manhattan Brass Co.

26 X Q. You say, "I think;" are you sure?

A. To the best of my knowledge it is so.

27 X Q. How did you get that knowledge?

A. From my Maker.

28 X Q. Is that the best answer you can give to my last question?

A. It is.

29 X Q. Then you did not obtain that knowledge recently, I mean the knowledge referred to in your answer to question 26, but did obtain it fifty-five years ago, when you were turned loose by your Maker?

Objected to as being a perversion of what the witness has stated.

A. Obtained it then and have improved on it since, the same I am informed of all other human beings.

Mr. Bernheim, the representative of the defendant, here remarked, the lawyers are paid so much an hour; and the witness also stated, "These are funny questions."

30 X Q. How much did you pay in 1878 for the other locks you obtained from the Manhattan Brass Co.?

A. I do not know, but our books will tell.

31 X Q. What books?

A. Invoice, day book, and ledger.

32 X Q. You have no present knowledge on that point, have you?

251 A. With the multiplicity of goods we buy it would be impossible for me to recollect.

33 X Q. Have you any objection to produce these books?

A. No.

Cross-examination closed.

Redirect examination waived.

GEO. B. JENKINSON.

Sworn before me—

JOHN A. SHIELDS, *Examiner.*

Adjourned to Monday, May 19th, 1884, at 11 a. m.

NEW YORK, *May 19th*, 1884—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

Mr. GUSTAV BERNHEIM, a witness produced on the part of the defendant, being duly sworn, deposes and says:

1 Q. Please state your name, age, residence, and occupation.

A. Gustav Bernheim; age, thirty-nine years; I reside in New York city; I am a manufacturer of and dealer in all kinds of material for fancy leather goods.

2 Q. You are a member of the firm of R. Neumann & Co.?

Objected to as leading.

A. I am.

3 Q. You are the Gustav Bernheim mentioned in United States letters patent No. 163,629, of May 25th, 1875, are you?

The same objection.

A. I am.

252 4 Q. Have you or your firm, R. Neumann & Co., done any business in locks for bags similar to the construction of device shown in said patent 163,629?

A. We have sold such locks ever since the patent was granted up to this day.

Defendant's counsel offers in evidence a certified copy of said patent 163,629, and the same is marked "Def'ts' Exh. Bernheim 1875 Patent, May 19, 1884, J. A. S., ex'r."

5 Q. Are there here present any structures showing how you made locks under this patent in 1875 and since? If so, please point them out.

A. Here is one structure showing the entire outside shell of the lock.

Witness points to Defendants' Exhibit Bernheim Model already on file with the clerk of this court, and the same is now offered in evidence as Def'ts' Exh. Bernheim Model, May 19, 1884, J. A. S., ex'r.

6 Q. I notice that in Def'ts' Exh. Bernheim Model the ends of the upper case are open, and that end pieces are applied thereto. Have you or your firm made such locks of this construction; if so, for how long?

Objected to as leading.

A. We made such locks ever since the time the patent No. 163,629 was granted.

7 Q. And have you sold such locks?

The same objection.

A. We sold quantities.

8 Q. Please look at Comp't's Exh. Infringing Lock on file with the clerk of this court and state whether you recognize said construction of lock.

A. I think it is a lock we have been making.

253 9 Q. Have you made it under any patent? If so, please state which.

A. We made it under a patent, No. 238,037, granted to R. Flocke Feb'y 22, 1881, and assigned to us, I believe.

Counsel for def't offers in evidence a certified copy of said letters patent No. 238,037, and it is marked Def'ts' Exh. Flocke 1881 Patent, May 19, 1884, J. A. S., ex'r.

A. Perhaps within the last year or two we may have made such a lock, although I am not positive about it, but I am very positive that, for the first few years we made these locks, we made them all like Def'ts' Exh. Bernheim Model.

22 X Q. In 1875 you did not make any lock having the characteristics specified in the 20th cross-question?

A. No, sir.

23 X Q. Nor in 1876?

A. Nor in 1876.

24 X Q. Did you in 1877?

A. I don't think so.

25 X Q. You are a partner of the defendant, David Neumann, are you not?

A. I am.

257 26 X Q. How long have you been his partner?

A. Since January 1st, 1868.

27 X Q. When first did you make a lock like Exhibit Infringing Lock?

A. I couldn't tell exactly; perhaps a year ago.

28 X Q. Why didn't you use locks like Exhibit Bernheim 1875 Lock in places where you used locks like Exhibit Infringing Locks?

A. I don't know. We sometimes make changes in locks.

29 X Q. But you do not know why you made the change to which I refer in my last previous question, do you?

A. I didn't know any particular reason. Some people use that 1875 lock yet and others don't.

30 X Q. When first did you make locks like that in Exhibit Neumann Satchel?

A. Some time last fall.

31 X Q. Is Exhibit Neumann First Lock the same kind of lock as that in Exhibit Neumann Satchel?

A. The Exhibit Neumann First Lock opens with a key and the Exhibit Neumann Satchel lock opens by a secret spring. That is about all the difference there is.

32 X Q. When first did you make a lock like Defendants' Exhibit Neumann First Lock?

A. Both locks were made last fall—Exhibit Neumann First Lock early in the fall and the other, like in Exhibit Neumann Satchel, late in the fall.

33 X Q. When first did you sell such lock?

A. In the course of last fall, but very few were sold in the course of last fall.

34 X Q. When first did you sell such locks in larger quantities?

A. We never sold them in large quantities until we changed them to Exhibit Neumann Lock No. 2.

35 X Q. And when was that?

A. Right after New Year's, 1883.

258 Cross-Qs. and answers 31 to 35, inclusive, expunged by order of July 31st, 1884.

36 X Q. Did you make and sell locks like Exhibit Neumann Lock No. 2 in the summer of 1883?

A. No, sir.

37 X Q. Did you make and sell locks like Exhibit Neumann First Lock in the summer of 1883?

A. I told you before that we sold some in the summer or fall of 1883.

38 X Q. Are you sure that you sold some in the summer?

A. I cannot remember the exact day when we sold the first locks. I am sure that we sold them early for the fall trade of 1883. I could not tell what date that was without referring to my books, which I will do if requested.

39 X Q. How would such locks be entered in your books?

A. I couldn't tell you. I do not keep the books and have given very little personal attention of late to the lock business, as we are engaged in another trade, which requires most of my time.

40 X Q. Did you look into your books at any time to ascertain for the purposes of this suit when first you sold such locks?

A. I don't think I did. I believe I was assisted in getting at the date by the date of the patent.

Cross-Qs. and answers 37 to 40, inclusive, expunged by order of July 31st, 1884.

41 X Q. Look at the affidavit purporting to be sworn to on the 12th of April, 1884, before W. Hauff, notary public, and state whether that is your affidavit.

A. I signed this affidavit.

259 The said affidavit, which is on file in the clerk's office of this court, is offered in evidence by counsel for complainant and marked Compl't's Exh. Bernheim Affidavit of April 12th, 1884, May 20, 1884, J. A. S., ex'r.

42 X Q. Were you present at the time the witness Oswald was examined on behalf of complainant in this cause?

A. No, sir.

43 X Q. Were you advised by your counsel of the purport of his testimony?

A. No, sir.

44 X Q. When did your counsel first learn from you that you made locks like Exhibit Neumann Satchel?

A. It was some time since these proceedings were commenced. I don't know exactly what date.

45 X Q. Was it before or after you made the statement herein of March 1, 1884?

Objected to, as said statement is the statement of David Neumann.

Counsel for complainant says that he refers to Compl't's Exh. Def'ts' First Statement, which bears the signature of this witness, and asks the officer to certify that said exhibit is handed to the witness in connection with cross-question 45.

Defendant's counsel states that this witness appears on said statement only as attorney in fact.

The examiner's clerk certifies that said exhibit is presented to the witness.

A. I don't remember.

46 X Q. Did you sign that statement?

A. I signed it as attorney-in-fact for David Neumann.

47 X Q. Where did you sign it?

A. Either at my office or at Mr. Hauff's. I don't remember.

48 X Q. At or before the time you signed it, did you ask
260 Mr. Hauff whether you should include therein locks like those on Exhibit Neumann Satchel?

A. I don't believe I did.

49 X Q. Are you certain that you did not?

A. I don't think I asked him any questions at all. I knew for what lock we were under bond, and didn't go any further.

50 X Q. Do you make different sizes of locks like Exhibit Infringing Lock?

A. I am not positive whether we do or not.

51 X Q. Does your statement relate to one size only?

A. These locks are called No. 19, whether they are one or two sizes; we don't change the number, and the statement includes all the locks of that description.

52 X Q. You called yourself the attorney-in-fact for David Neumann; have you a power of attorney to that effect?

A. Yes, sir.

Counsel for complainant calls for such power of attorney, also for defendant's books to which this witness referred in his answer to X Q. 38, and requests that the same be produced before the cross-examination of this witness is concluded.

Counsel for defendant states that he has no objection to the witness producing such power of attorney at his earliest convenience; and in regard to the books called for defendant's counsel notes that the witness stated in cross-answer 38 that he would refer to his books to find out when his firm sold the first locks like Exhibit Neumann First Lock, and that such book or books may be referred to for that purpose without objection on his part, but states that he will not allow an inspection of all or any part of defendant's books for any other purpose unless the court so orders.

261 53 X Q. Did you have locks like Exhibit Infringing Lock on hand at the time this suit was brought?

A. I don't know whether we had any on hand or not. We manufacture these goods to order only, and when we have orders we make them.

54 X Q. If that is true, how is it that Oswald bought them of you?

A. I don't believe he bought them of us; I cannot find any trace of it in our books. It might be, however, that we have an order from somebody for ten or twenty dozen, and a man comes in and wants a half dozen or a dozen and we give them to him out of the order, replacing them afterwards.

55 X Q. Did you look in your books for sales of such locks to A. F. Eggers?

A. I did not.

56 X Q. Why not?

A. Nobody wanted me to.

57 X Q. Mr. Oswald testifies that he bought these locks for A. F. Eggers of you, and you testify that you cannot find any trace of that transaction in your books. How did you go to work to trace that transaction in your books?

A. This is the first time I hear that he testified having bought those locks for Eggers. I always was under the impression that he had said he bought them for himself.

58 X Q. You did not understand direct question No. 14, which will be read to you to convey that information to you, did you?

A. No, sir.

59 X Q. Did you or your firm threaten said Oswald with prosecution because of the testimony he has given in this cause?

A. To the best of my knowledge, I never saw or spoke to Mr. Oswald in my life.

Answer objected to as not responsive.

60 X Q. You don't know of any letter written to him in that connection, do you?

262 Objected to unless such alleged letter, if any there be, be produced.

A. I don't.

61 X Q. Mr. Oswald testifies that he bought locks of you like Exhibit Infringing Lock in the year 1882. You testify that such locks were only made about a year ago. Is Mr. Oswald mistaken, do you think?

A. I don't know; I didn't say it was exactly a year; it may be a few months more.

62 X Q. Did you ever sell locks like Exhibit Roemer Lock Case?

Objected to as not cross-examination and as immaterial.

A. Not that I know of.

63 X Q. Did you ever buy any of Mr. Roemer?

The same objections.

A. Formerly we bought some goods of Mr. Roemer until he refused to give us credit. Whether any of these locks were included in such purchases I am unable to say.

64 X Q. Do you now deal in locks like Exhibit Neuman Satchel?

Objected to as already answered.

A. No, sir.

65 X Q. In your affidavit of the 12th of April you refer to patent No. 279,733; had you examined that patent before you made that affidavit?

A. I don't remember.

66 X Q. Had you ever seen it before you made the affidavit?

A. I saw the patent when we got it.

67 X Q. Did you examine it when you got it?

A. I don't remember.

68 X Q. Then you couldn't identify it, even if you saw it, could you?

263 A. I am acquainted with the general features of the patent. I think I could identify it.

69 X Q. Is this it?

A. It looks like it.

Counsel for complainant offers in evidence a Patent Office copy of letters patent No. 279,733, granted to R. Flocke, assignor to R. Neumann & Co., and dated June 19th, 1883, and the same is marked Complainant's Exhibit Flocke Loose Clip Patent, May 20, 1884, J. A. S., ex'r.

And counsel calls on def't's counsel to produce the original letters patent of which said exhibit is a copy.

Counsel for defendant here shows counsel for complainant the original letters patent No. 279,733, and it is consented by both parties that the Patent Office copy just marked as an exhibit be used in the place and stead of said original.

70 X Q. I notice that in patent 279,733 your firm is described as being of New York, while in Defendants' Exhibit Flocke 1881 Assignment your firm is described as being of Newark, New Jersey. Please explain how both descriptions are correct.

A. I never noticed that before, but both descriptions are correct, our factory being in Newark and our office in New York.

71 X Q. Do you sell your goods in New York?

A. We sell some in New York and some in Newark, but the bulk of the frame and lock business is transacted in Newark.

72 X Q. Do you enter in books in New York what you sell in New York?

A. All our sales are entered in the New York books.

73 X Q. Do you enter in books in Newark what you sell in Newark?

264 A. We do not keep regular books in Newark at all. All the transactions are charged in the New York books. In Newark we have only memorandums.

74 X Q. And who keeps these memorandums?

A. I think Mr. Carl Neumann personally, although I am not positive about it.

75 X Q. Where is he?

A. In Newark.

76 X Q. And who keeps your books in New York?

A. Our book-keeper; his name is Benedict. I don't remember his first name. I believe it is William.

Adjourned to Thursday, May 22, 1884, at 10 a. m.

NEW YORK, *May 22d*, 1884—10 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

The cross-examination of Mr. GUSTAV BERNHEIM continued by A. v. BRIESEN, Esq.:

77 X Q. Will you please produce the power of attorney?
A. There it is (handing it to complainant's counsel).

Complainant's counsel offers said power of attorney in evidence.
Counsel for defendant states that as said power of attorney may be required on other occasions than the present suit he requests complainant's counsel to consent that the examiner make a certified copy of said power of attorney to be offered in evidence in place and stead of the original.
Counsel for complainant consents to the above request, and it is agreed that said copy when made shall be marked Compl't's Exhibit Power of Attorney, May 22d, 1884, J. A. S., ex'r.

265 78 X Q. Did you bring the book which you were requested to produce?

Counsel for defendant notes that the witness stated that he would refer to the book to ascertain a certain date, and not that he stated that he would produce any book.

A. I referred to the book, but decline to produce it.
79 X Q. Why do you decline to produce it?
A. By advice of counsel.
80 X Q. Name that counsel.
A. Messrs. Van Santvoord & Hauff—both of them.

Counsel for complainant asks the examiner to certify this record immediately to the court, so that an order be made requiring the witness to produce said book, or, if not, to have his deposition expunged from the record.
Counsel for defendant joins in the request to certify the record to the court, in order to have it decided whether this witness is obliged to produce his books, but states that the motion to expunge any testimony from the record is improper, as in case of a witness' refusal to obey a mandate of the court the proper proceeding is to move for an attachment, and not to expunge matter from the record.

I, John A. Shields, examiner, hereby certify that the above is the testimony taken before me in this case.
May 22d, 1884.

JOHN A. SHIELDS,
H. B. G.

Adjourned subject to notice from the examiner.

266 NEW YORK, *July 24th*, 1884—2 o'clock p. m.

Met pursuant to notice.
Present: Wm. C. Hauff, Esq., of counsel for defendant, and A. v. Briesen, Esq., of counsel for complainant.

Mr. JOHN W. LIEB, a witness produced on the part of the defendant, being duly sworn, deposes and says:

1 Q. Please state your name, age, residence, and occupation.

A. John W. Lieb; age, 54 years; I reside in the city of Newark New Jersey; I am interested in the business of J. Lagowitz & Co., and superintend the manufacture of travelling bags, and also the frames for travelling bags.

2 Q. Did you ever make any improvements in locks for travelling bags or in handles or handle attachments for the same?

A. I did.

3 Q. Please tell us what it was that you so did, and if you have any devices here to show, as illustrations, you may refer to them in order to show us what you did.

Counsel for complainant objects to any evidence as to prior public use or sale of complainant's patented invention on the part of this witness, on the ground that neither the answer nor the amended answer herein alleges that the invention had been in public use or on sale in this country, to the knowledge of this witness, before complainant's invention.

A. I made a device like Defendants' Exhibit Lieb Lock B, and also a device like Defendants' Exhibit Lieb Lock A, and also a device like Defendants' Exhibit Lieb Lock C.

267 The devices referred to by the last witness are offered in evidence by defendant's counsel, and marked, respectively, Defendants' Exhibit Lieb Lock B, Defendants' Exhibit Lieb Lock A, and Defendants' Exhibit Lock C, July 24, 1884, J. A. S., ex'r.

4 Q. Please look at Defendants' Exhibit Lieb Lock B and tell us when you first made a device or devices like that exhibit.

A. I commenced to make a device like Lieb lock B the last week of March, 1877.

5 Q. Did you ever sell devices like Defendants' Exhibit Lieb Lock B; and, if so, when first?

A. Locks like devices of Lieb lock B on bags were sold by J. Lagowitz & Co. about from July 1st, 1877, and subsequent.

6 Q. When first did you make a device or devices like Defendants' Exhibit Lieb Lock A?

A. I commenced to make a device like Lieb lock A about the same time as I did Lieb lock B.

7 Q. Were devices like Exhibit Lieb Lock A sold? If so, when?

A. They were sold about at the same time as the devices like Lieb lock B.

8 Q. By whom were these locks like Exhibits Lieb Locks B and A sold?

A. They were sold by J. Lagowitz & Co.

9 Q. When did you make Defendants' Exhibit Lieb Lock C?

A. I made that, together with another one of the same kind, during September, 1877.

10 Q. What became of that other one of the same kind, as far as you know?

A. The other one was attached to a bag and put in stock with other bags and sold.

11 Q. And when was it that this other one was attached to a bag and put in stock with other bags and sold?

A. It was sold within two months after being made.

268 12 Q. Why did you not make more than two devices like Defendants' Exhibit Lieb Lock C?

A. Because I did not find them as good and practical as the other two devices, Lieb locks A and B.

13 Q. Did you make any experiments in getting up devices like Exhibits A and B. And, if so, please point out any devices, if you have them here present, showing experiments you made while getting up said devices.

A. Defendants' Exhibit Lieb Experiment 2 is one of the experiments or models. Another, Exhibit No. 1, is in an advanced state of construction of Lieb lock A.

Defendants' counsel offers in evidence the article referred to by witness in giving his last answer, and the same are marked Defendants' Exhibits Lieb Experiments 1 and 2, July 24, 1884, J. A. S., ex'r.

14 Q. Can you tell us during what period you made the articles Defendants' Exhibits Lieb Experiments 1 and 2?

A. They were made between the first part of April, 1877, and July, 1877.

15 Q. What does "Pat. Aug. 28, '77," on Lieb locks A, B, and C refer to?

A. It refers to patents for both, for the device for fastening the handle to the lock.

16 Q. Who is the patentee of those patents?

A. I am the patentee.

17 Q. Please look at certified copies of patents I now show you and state whether they are the patents you refer to in your answer 15.

A. They are.

Defendants' counsel offers in evidence said certified copies of patents, and they are marked respectively Defendants' Exhibits Lieb 1877 Patent, No. 1 and 2, July 24, 1884, J. A. S., ex'r.

269 18 Q. How did you come to make the device Complainant's Exhibit Lieb Lock C and the other one like it which you made, as you testified?

Objected to as immaterial.

A. I was led to it by the occasional breaking of the ends of the lock in fastening the ring which goes around the handle cap into the slot contained in the ends, by bending the points down over the ridges formed near the slot, which had to be crowded in and turned over by the hammer.

19 Q. When did you first get the idea of making a device like Defendants' Exhibit Lieb Lock C?

The same objection.

A. It was about the time I obtained the patents or about the date of the patents. (I refer to Lieb 1877 patents, Nos. 1 and 2.)

20 Q. How are you able to fix the date as during September, 1877, that you made Defendants' Exhibit Lieb Lock C and another device like it of the same kind?

A. Because my recollections are that they were made shortly after the date of the two said patents.

Cross-examined by A. v. BRIESEN without waiving objections:

21 X Q. Did you sell that other lock which you say was like Exhibit Lieb Lock C?

A. It was sold by J. Lagowitz & Co.

22 X Q. Did you sell it personally?

A. I did not sell it personally.

23 X Q. Were you present when it was sold?

A. I was not present when it was sold, but I recollect that it was put in stock with bags containing or having the locks on of the other devices as Lieb locks A and B, which stock was entirely sold during the time or after two months after the locks were made and put on bags.

270 All after and including the words "but I recollect" objected to as not responsive.

24 X Q. Who sold it?

A. It was sold by J. Lagowitz & Co.

25 X Q. I wish to know the name of the person who sold it.

A. I cannot tell the name of the person who sold it, because orders were coming in from different parties to whom samples were sent like Lieb locks A and B, and Lieb lock C looked so much like the other two it was not kept separate from the others, and was sold along with the rest of the others. I meant to say that it looked much like the Lieb lock B.

All after the words "who sold it" objected to as not responsive.

26 X Q. Who bought it?

A. I don't know who bought it.

27 X Q. Was it sold in Newark or New York?

A. All our goods are sold in New York, and especially goods which are ordered by mail.

28 X Q. Was it ordered by mail?

A. I do not know.

29 X Q. That thing which you say was like Exhibit Lieb Lock C was attached to a bag, was it not?

A. It was.

30 X Q. Was Exhibit Lieb Lock C or any of its parts ever attached to a bag?

A. It was attached to a frame and taken off again.

31 X Q. When was it taken off?

A. Shortly after it was attached.

32 X Q. The other thing which you say was like Exhibit Lieb Lock C was attached to a bag, as you testified. What kind of a bag was that?

A. It was a leather bag, but I do not recollect the exact style of it.

33 X Q. Did you see it on the bag?

271 A. I put it on the frame, and then I had the bag attached to the frame by same of the bag makers.

34 X Q. X question 33 repeated,

A. I did see it on the bag.

35 X Q. What was the color of that bag?

A. I don't recollect the color.

36 X Q. Can you give us the size of that bag?

A. I cannot.

37 X Q. You say you saw it on the bag. How came you to see it there, and where was it when you saw it on the bag?

A. I came to see it because I examined some of the bags after they are finished, and I saw it in the shop before it was put in stock.

38 X Q. Can you name any person who assisted you in putting it on the bag?

A. I cannot.

39 X Q. Is every part of the present Exhibit Lieb Lock C now in the position in which it originally was in 1877?

A. It is.

40 X Q. Even the end rivets on the lock case?

A. Yes.

41 X Q. As you compare the appearance internally of Exhibit Lieb Lock C with that of Exhibit Lieb Lock B, are you prepared to swear that those parts of Exhibit Lieb Lock C were made in 1877?

A. I am; and I will also tell the reason why the Exhibit Lieb Lock C does not look as old and corroded like Exhibit Lieb Lock B, because Exhibit Lieb Lock C was kept in a bag along with another lot of articles I made from time to time.

42 X Q. Do you believe in the solemnity of an oath?

A. I do.

43 X Q. If Exhibit Lieb Lock C had really been made, as you try to make us believe, in 1877, how is it that all those edges of that exhibit, which are not found in Exhibit Lieb Lock B, look fresh, while all those edges which it has in common with Exhibit Lieb Lock B look as old as they do in the other exhibit?

272 Objected to as assumptive.

A. I say that all the edges formed by the characteristic of the Lieb lock C do not look new.

44 X Q. You made an affidavit in this cause in April, 1884, did you not?

A. I think I did, as far as I can recollect.

45 X Q. How many affidavits do you recollect making in this cause?

A. I think I made two.

46 X Q. At the time you made the first affidavit in this cause, where was Exhibit Lieb Lock C?

A. At the time I made the first affidavit I did not recollect that

the Exhibit Lieb Lock C was in a bag, as stated before, which bag I found afterwards in the closet when I looked for some other articles. That closet stands on the same floor with our packing-room and contains many different articles.

Adjourned to Thursday, July 31, 1884, at 10 a. m.

NEW YORK, *July 31st*, 1884—10 o'clock a. m.

Met pursuant to adjournment.
Present: W. C. Hauff, Esq., of counsel for defendants.

Defendants' counsel states that he has received word from the witness, John W. Lieb, that it will be impossible for him to come to New York on July 31st, 1884, and that defendants' counsel has asked complainant's counsel to consent to an adjournment to August 7th, 1884, and to extend defendants' time seven days after August 14th, 1884, and complainant's counsel has informed defendants' counsel that complainant's counsel agrees to such adjournment and extension of time on condition that no witness be examined between now and August 7th, 1884.

Adjourned to August 7th, 1884, at 11 a. m.

273 NEW YORK, *August 7th*, 1884—11 o'clock a. m.

Met pursuant to adjournment.
Present: Counsel for respective parties.

The cross-examination of Mr. LIEB continued by A. v. BRIESEN, Esq.:

47 X Q. At the time you made your first affidavit in this cause did you remember having made such a thing as Defendants' Exh. Lieb Lock C?

A. I did remember, but I did not know or recollect that Exh. C was in existence yet.

48 X Q. But you knew well enough that you had made it?

A. I did.

49 X Q. Did you tell any one that you had made it?

A. I did not.

50 X Q. Why not?

A. Because I thought it of no use.

51 X Q. Why did you think it of no use?

A. Because I knew that in certifying or giving testimony of having made an article it would be of no effect unless you can produce or show that article.

52 X Q. How did you acquire that knowledge?

Objected to as immaterial.

A. Because I had a little experience in patent litigation.

53 X Q. Please state that experience.

A. I was interested in the interference case between Sonnekalb and Lieb against J. H. Sessions and also Roulston.

54 X Q. Did Mr. Roemer ever notify you that you were infringing upon his patent, 208,541, which I now show you?

The same objection.

274 A. Mr. Roemer told me several times that J. Lagowitz & Co. are making locks which he thinks are infringing on some of his patents.

55 X Q. Did he ever tell you that you were infringing that particular patent?

The same objection.

A. I recollect that he told me that making a lock as J. Lagowitz & Co. does infringes on a patent of his, referring to a lock made of one piece, and he thinks the construction of that lock interferes with that said lock of his.

56 X Q. Did you understand that that referred to this patent?

A. I understood it to refer to the lock made of one piece, because he told me that he considered this lock to cover the construction of the lock made by J. Lagowitz & Co., as he considered that this lock of J. Lagowitz & Co. was like his lock cut in three pieces.

57 X Q. Do J. Lagowitz & Co. make a lock the end of which is constructed like the sketch now shown you?

A. Not exactly. The end piece which forms the handle fastening is put against the edge of the sides of the lock.

Said sketch is marked for identification "Lieb Cross-question 57, Aug. 7, 1884," J. A. S., ex'r.

58 X Q. Before making that lock last referred to did you ask Mr. Roemer to grant you a license under his patent?

Objected to as immaterial.

A. I did not.

59 X Q. Were you present when your partner, Mr. Lagowitz, asked Mr. Roemer to grant him a license under the patent?

The same objection.

275 A. I recollect of hearing Mr. Lagowitz asking Mr. Roemer what he would charge him to make a lock of the construction of which I do not recollect as having been specified by Mr. Lagowitz.

60 X Q. Did Mr. Lagowitz see Exhibit Lieb Lock C?

A. He did not.

61 X Q. Did you tell him of having made such a lock as Exhibit Lieb Lock C; if so, when first?

A. I did not, because I always made it my rule whenever I made anything new not to show it to anybody else until I have found the same to be of practical use.

62 X Q. How was the lock case of Exhibit Lieb Lock C made—I mean by stamping or by casting?

A. By casting.

63 X Q. Was it made in an ordinary mould or was the mould specially prepared for it?

A. It was made in the same mould or by the same mould as Exhibit Lieb Lock B, and was cut off and formed into the shape of Exhibit Lieb Lock C, and the handle fastenings belonging to the same exhibit were cut off from another lock, which was also like Exhibit Lieb Lock B.

64 X Q. How do you know that the lock case of Exhibit Lieb Lock C was cast in the same mould in which the lock case of Exhibit Lieb Lock B was cast?

A. Because I took a lock case intended for a lock like Lieb lock B and formed the Lieb lock C from it.

65 X Q. You are quite sure of that, are you not?

A. Let me look at the exhibit.

66 X Q. I prefer to have you state your recollection of what you really did without your looking at the exhibit.

A. I think I did, as much as I recollect.

67 X Q. I observe in your patent, marked Exhibit Lieb 1877 Patent No. 2 (No. 194,556), that the handle-holders are separate pieces riveted to a connecting plate, D. Did you ever make and
276 sell constructions of that kind—that is to say, with the handle-holders made of separate pieces—before you united them into one piece with the lock case, as shown in Exhibit Lieb Lock B?

A. I did not. The plate D, to which the handle fastenings C are rivetted, as shown in the patent referred to, is meant to be the frame of the bag.

68 X Q. Did you never make, before you constructed locks like Exhibit Lieb Lock B, devices like that shown in said patent 194,556, where the two handle fastenings are separate pieces and separately rivetted to the frame?

A. When I first made the Lieb lock B I made it of one piece, lock case and handle fastenings, and applied for a patent for this specific construction of the handle fastenings, as I thought that of the most importance.

Answer objected to as not responsive.

69 X Q. Do I understand you to mean by your last answer that you had not made a device like that shown in patent 194,556—I mean with a separated and separately attached handle fastenings?

A. I never did, unless the model for the patent application was made by the separate handle fastenings which are not connected to the lock case, which I do not surely recollect.

70 X Q. Who made that model?

A. I do not recollect.

71 X Q. Did you take it to Messrs. Dodge & Son?

A. I sent a model and sketches to Dodge & Son, according to my recollection.

72 X Q. But you don't recolleect how that model was constructed, do you?

A. I cannot surely tell how that model was constructed.

73 X Q. Nor can you tell whether you made it yourself or not?

A. I do not recollect whether I did or not.

277 74 X Q. Where was Exhibit Lieb Lock A kept before you attached it to your affidavit in this cause?

A. It was kept in the basement of one of our factory buildings, in a stock-room.

75 X Q. Are goods that enter the stock-room in your factory recorded in any book?

A. They are not.

76 X Q. Then, when you say that when you put a thing in stock you simply mean that you sent it to the stock-room without any entry being made thereof. Is that it?

A. We keep no records for goods contained in stock-room where we keep trimmings and various kinds of locks.

77 X Q. Where was the Exhibit Lieb Lock B kept?

A. We found it in the same stock-room where we kept Exhibit Lieb Lock A.

78 X Q. Who do you mean by "we" in that last answer?

A. I mean I.

79 X Q. Are the handles and handle connections for Lieb Lock B made at your factory?

A. Yes; they were, for which I can show you the tools, if they are not used up for some other purpose.

80 X Q. Have you, then, discontinued making things like Exhibit Lieb Lock B?

A. We did discontinue because we found that the handle fastenings would not be sufficiently strong enough secured to the lock ends and frequently broke off.

81 X Q. When did you discontinue making locks like Exhibit Lieb Lock B?

A. I cannot tell the exact time.

82 X Q. State as near as you can recollect.

A. I cannot tell.

83 X Q. Did you discontinue making them in 1877?

A. No; we did not.

278 84 X Q. Did you discontinue making them in 1878?

A. I cannot surely tell whether we did or not.

85 X Q. What construction of lock took the place of Exhibit Lieb Lock B after you discontinued making the latter?

A. Locks like Exhibit Lieb Lock A.

86 X Q. Did you not also, after you discontinued making locks like Exhibit Lieb Lock B, make some locks in which the lock cases were cast and separate handle-holders placed against their ends?

A. We did not.

87 X Q. Did you ever make locks other than locks like Exh. Lieb Lock B and C in which the lock cases were cast?

A. We made a few locks in which the lock case was cast.

88 X Q. When?

A. I think it was during the year of 1877.

89 X Q. How did they differ from Exh. Lieb Lock B?

A. The construction of the locks was somewhat different from Lieb lock B, as the handle fastenings, which were riveted to the

frame, were not connected with the lock case and placed a little distance away from the same, and we made only a few of them.

90 X Q. You say that you think these lock cases last described were made in 1877. Are you quite certain that they were made in 1877?

A. I am.

91 X Q. What makes you certain?

A. Because, to my recollection, they were made.

92 X Q. Who made your moulds for casting the lock cases?

A. At the time of making the moulds we had tool-makers employed beside the foreman of the frame shop, and the moulds for those various kinds of locks were made by them. One of said tool-maker's name is Frederick Heilman. The name of the other tool maker I do not recollect. The name of the foreman is Otto Hanko.

279 93 X Q. Are those two persons still in your employ?

A. Frederick Heilman is; Otto Hanko is not.

94 X Q. I observe on Exh. Lieb Lock B a patent stamp, as follows: "Pat. Aug. 28, '77." Who made that stamp for you?

A. I do not recollect.

95 X Q. Was it made in your shop?

A. It was not.

96 X Q. Can you find from your books the name of the party who made that stamp for you?

A. I don't think I can, as it may have been included in other expenses incurred.

97 X Q. Do you mean to swear here that with proper efforts you would be unable to ascertain the name of the party who made that stamp for you?

Objected to as already fully and fairly answered.

A. I am not sure whether I would be able to furnish that name.

98 X Q. Will you try to ascertain it?

A. I will.

Adjourned to Friday, August 8, 1884, at 10 a. m.

NEW YORK, *August* 8, 1884—10 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

The cross-examination of Mr. LIEB continued by A. v. BRIESEN, Esq.:

99 X Q. Did you ascertain the name of the person who made the patent stamp for Lieb lock B?

A. I examined the petty cash book at our factory, in which are entered some expenses at our factory, and found an item of

280 cash paid to Henry Buechlein of two dollars and thirty cents, which I think was in part for the patent stamp which appears on Exh. Lieb Lock B.

I also enquired of Mr. Buechlein whether he can recollect or

whether he has any records on his books of having made said stamp, and he said that during a fire — occurred about that time his books were destroyed and he could not recollect of having made said stamp.

I also had a search made for a bill paid October 8, 1877, which could not be found.

100 X Q. Why didn't you look for bill paid October, 1878?

A. Because I thought a bill of that date would have no reference to the present case.

101 X Q. You mean it wouldn't help your friends—the defendants?

Counsel for defendants calls attention to the fact that both in this last preceding question, as also in cross-question 43, counsel for complainant has attempted to impute improper motives to this witness without any reason or foundation therefor, and that counsel for complainant has also just now said, "I may do some more of that hereafter," and defendants' counsel protests against such improper manner of cross-examination and calls upon complainant's counsel to refrain therefrom.

A. I have no interest in this affair.

102 X Q. Then what do you mean by saying a bill of October, 1878, would have no reference to the present case? How do you know it would not?

A. Because we had many stamps made by Henry Buechlein.

103 X Q. Is that the best answer you can give?

A. I think it is.

104 X Q. And now I understand you to testify that you
281 did not look for a bill of October, 1878, because you had many stamps made by Henry Buechlein; am I correct?

A. Yes.

105 X Q. When was that stamp which reads pat. Aug. 28, '77, delivered to you? I mean the stamp which is reproduced on Exhibit Lieb Lock B?

A. I think it was delivered in September, 1877.

106 X Q. Are you certain that it was delivered in September, 1877?

A. I cannot very positively say it was.

107 X Q. Who did the stamping of these locks like Exhibit Lieb Lock B? I mean by stamping putting on the patent stamp.

A. I don't remember who did.

108 X Q. Who cast the lock cases of locks like Exhibit Lieb Lock B?

A. The first lock cases cast were made by Ballard & Minchin, of East Newark.

109 X Q. How long did they do it, and who cast said lock cases like Exhibit Lieb Lock B afterwards?

A. I cannot exactly remember the time for how long they did cast, but after they did discontinue to make them we had them cast by A. Terry & Co., Terryville, Connecticut.

110 X Q. Did Terry & Co. use the same moulds that Ballard & Minchin had used for lock cases like Exhibit Lieb Lock B?

A. I don't recollect whether they did or not.

111 X Q. If they had not used the same moulds would they have charged you for the set they made?

A. I can only say that in some cases they have charged J. Lagowitz & Co. for moulds and in some cases not—that is, Terry & Co.

112 X Q. Why did you go from Ballard & Minchin to Terry & Co. regarding your work?

A. Because we were not satisfied with their work.

113 X Q. What ailed it?

A. Because they were not satisfactory.

282 114 X Q. In what respect, I want you to tell me?

A. Various causes.

115 X Q. State the same.

Objected to as entirely immaterial.

A. Do you want that question answered?

Answer objected to as not responsive.

116 X Q. Question repeated.

A. Because the casting was not smooth enough and not uniform in thickness.

117 X Q. Was the lock case of Exh. Lieb Lock B cast by Ballard & Minchin or by Terry & Co.?

A. (Witness examines the exhibits which are handed him by complainant's counsel and says:) I think it was cast by Ballard & Minchin.

118 X Q. Was the lock case of Exh. Lieb Lock C, which I now hand you, made by Ballard & Minchin or by Terry & Co.?

A. I cannot tell whether it was or not.

119 X Q. Compare the lock case of Exh. Lieb Lock C with that of Exh. Lieb Lock B, and state whether they appear to be cast in the same mould.

The exhibits are handed to the witness, who examines them.

A. I cannot tell.

120 X Q. Has the lock case of Exh. Lieb Lock C the defects which Ballard & Minchin's lock cases had and of which you say you complain?

A. I cannot say whether it has, because the case has been finished.

121 X Q. I understand you to swear here that a comparison of the two lock cases of Exhs. Lieb Lock C and Lieb Lock B does not enable you to say that they were cast in the same mould; am I right?

A. It does not enable me to say they were cast in the same mould, because the present shape of Exh. Lieb Lock C, or rather the ends of the same, were filed out by me from a lock case like Exh. B.

283 122 X Q. Were the two holes near the ends of the lock case of Exh. Lieb Lock C—I mean the holes which are not filled with the rivet pins—formed by casting or drilling?

A. I cannot say whether they were or not.

123 X Q. Were the two holes near the ends of the lock case of Exh. Lieb Lock B formed by casting or drilling?

Objected to as indefinite, as there are four holes near or at the ends of the lock case of Lieb lock B.

A. I think they were formed by casting.

124 X Q. Was Exh. Lieb Lock B ever attached to a bag?

A. I cannot say whether it was or not.

125 X Q. Then how do you account for the creases or scratches which appear on the upper surface thereof, near the innermost rivet holes?

A. The lock case B may have been attached to a bag or a frame, and the creases or filing on the holes may have been caused by filing off the head of the rivet in taking the lock off of the frame.

126 X Q. Do your books show when you first gave out this work to Terry & Co.?

A. I don't know.

127 X Q. Do they show when you first received such work from them?

A. I suppose they do.

128 X Q. Can you tell from a comparison of Exhs. Lieb Lock C and Lieb Lock B, which I now hand you, whether the key-holes were produced by the same instrument or not?

A. I cannot say, because in some cases the key-holes were filed out to make more room for the key.

129 X Q. Was Terry & Co.'s work satisfactory to you?

Objected to as immaterial, as merely an attempt to pry into the witness's private business.

284 A. In some cases they were.

130 X Q. Do I understand you to say that Exh. Lieb Lock C was made from two locks like Exh. Lieb Lock B or only from one? What is your recollection on that point?

A. I think it was made from two.

131 X Q. But you are not certain, are you?

A. I think it was made from two, for if it would have been made from one the place caused by cutting the same in two would not have made the lock the same length as it is now.

132 X Q. When was Exhibit Lieb Lock C taken off the frame?

A. I think it was taken off in September or October, 1877?

133 X Q. Why was Exhibit Lieb Lock C taken off the frame?

A. I cannot recollect the cause.

134 X Q. Who took Exhibit Lieb Lock C off the frame?

A. I took it off myself.

135 X Q. Who put the rivet pins in the ends of the lock case of Exhibit Lieb Lock C?

A. I did.

136 X Q. At the time Exhibit Lieb Lock C was on the frame were the rivet pins which now appear on the ends of its lock case passed through the frame, or did they rest on it simply?

A. I have to see the exhibit.

137 X Q. I will show it to you, holding it in my hand. Can't you tell from your recollection?

A. I am near-sighted. I have to see it close.

138 X Q. Can't you tell from your recollection how many rivet pins connected Lieb lock C to the frame?

A. I cannot tell from recollection without seeing the lock close.

139 X Q. At the time you took Exhibit Lieb Lock C off of the frame, just tell us exactly what you did.

A. I cannot remember any particulars aside from taking off the lock.

285 140 X Q. You have testified that you put the rivet pins into the ends of the lock case of Exhibit Lieb Lock C. What did you put them in for?

A. I put them in for the purpose of keeping the lock case and the parts containing the handle fastening close together on the frame.

141 X Q. Now, take Exhibit Lieb Lock C into your hands and tell us whether the lower ends of these rivet pins had or had not passed through the frame.

Witness examines the exhibit.

A. They might have passed through the frame and at the same time not have been riveted to the frame.

142 X Q. We are not here to guess, and I did not ask you what might have been; I ask you as to the fact enquired about.

Objected to as immaterial.

A. What I say is as near as I am convinced of.

143 X Q. Of what are you convinced?

Objected to as indefinite.

A. I am convinced, as far as my recollections go, of all what I have stated.

144 X Q. How did the handle fastenings of things like Exhibit Lieb Lock B break off and where did they break off?

A. Some of them, or rather the part into which the ring is fastened, broke during or while striking over the ends of the ring; some broke off during the time of using the bag to which the lock was fastened; they broke off, when the bag was in use, at the place where they enter the slot on the lower part.

145 X Q. Who, if any one, assisted you in making Exhibit Lieb Lock C?

A. Nobody did, to my recollection.

146 X Q. Who saw it first?

A. I did not show it to anybody.

286 147 X Q. Where did you make it?

A. I made it in our frame-shop, where I often make experiments, by my own hands, as I am enabled by having learned the business of lock-making.

148 X Q. Did you recently speak to Otto Hanko about locks like Exhibit Lieb Lock C?

A. I did, some weeks ago, in the presence of Mr. Faber du Faur.

149 X Q. Why did you speak to him at that time?

A. I wanted to strengthen my memory whether he had seen or whether he did know that I made the lock Exhibit C.

150 X Q. Did you ask him to make an affidavit?

A. I did not; I merely asked him whether he did see the lock Exhibit C.

151 X Q. Did you make several efforts to find Hanko?

A. I went to the factory where he was employed with the intention to ask him about different matters. I solicited him to come down to the office, and he sent reply that he had no time to see me.

Answer objected to as not responsive.

152 X Q. When you finally went to see him why did you take Mr. Faber du Faur along?

A. For no particular reasons, as Mr. Faber du Faur came over to our factory, at East Newark, to see me about some private matters, and at the same time I intended to go over to Newark; I asked him whether he would go along with me, so we stepped into Riley & Osborne's office, where we sat down, and then upon calling Mr. Hanko to the office I suppose Mr. Faber du Faur has heard the conversation between me and Mr. Hanko.

153 X Q. If you knew that what you testified to to-day and yesterday is true, why did you go to Hanko?

A. Because it might have been possible that he saw me making the lock C.

287 154 X Q. Have you recently spoken to F. Heilman on the subject?

A. I did.

155 X Q. What did you do that for?

A. I wanted to see whether he had seen me making the lock, or knew anything about it without my knowledge of it.

156 X Q. Have you recently spoken to sundry other persons on that subject?

A. Not to my recollection.

157 X Q. To your present best knowledge, information, or belief, who was the first person beside yourself who saw Exhibit Lieb Lock C?

A. After having found the same I took it to Mr. Charles Neumann and told him what I had found recently among some other articles. I think he was the first person who saw it.

158 X Q. To your present best knowledge, information, and belief who was the first person who saw the counterpart of Exhibit Lieb Lock C, besides yourself?

A. I think nobody did except the bag-maker who attached the bag to the frame, but the particular construction of the lock might have escaped his notice, as it looked so much like the other lock, Exhibit B.

159 X Q. Did you ask the bag-maker?

A. I did not; therefore I say it might have escaped his particular notice.

160 X Q. Why didn't you ask him?

A. Because I saw no reason for it.

161 X Q. Who was that bag-maker?

A. I don't recollect.

162 X Q. Is he still in your employ?

A. I do not know, as I said that I don't recollect who it was.

163 X Q. Can you give me the names of the bag-makers who were in your employ in September, 1877?

A. I cannot by memory.

288 164 X Q. Will your books give their names?

A. They may if the pay-roll of that year is in existence yet.

165 X Q. Who has charge of your books—I mean the books that would show when Terry & Co. first furnished you with castings—and also the pay-rolls?

A. Nobody in particular has charge of our old books.

166 X Q. Are they in your possession?

A. A few of them.

167 X Q. Where are the others—I mean those which are not in your possession?

A. Some of them are amongst other old stuff, or may be in the closet.

168 X Q. And in whose possession is that old stuff and that which is in the closet?

A. No particular person has charge of that.

Answer objected to as evasive.

169 X Q. Who owns that old stuff and that which is in the closet?

A. I suppose J. Lagowitz & Co.

170 X Q. You are one of the partners in that firm, are you not?

A. I am not a regular partner, but have some interest in their manufacture of bags and frames.

171 X Q. Are you a special partner?

A. I am not.

172 X Q. Who compose the firm of J. Lagowitz & Co., the owners of said books?

A. The present firm is composed of Mr. J. Lagowitz, Mr. Ascher Loovis, and Arnold Tanzer.

173 X Q. When did Ballard and Minchin first make or furnish you with cast-lock cases like that on Exhibit Lieb Lock B?

A. I think it was in June, 1877.

174 X Q. What makes you think it was in June, 1877?

A. Because I recollect to my best knowledge that it was several months before I received my patents—number 194,555 and also 194,556.

289 175 X Q. Who made the casting of Lieb Experiment 1?

A. I don't recollect who did.

176 X Q. Who made the casting of Lieb Experiment 2?

A. I think it was made by Mr. Stivers, who keeps a brass foundry in Newark.

177 X Q. Was or was not the lock case of Exhibit Lieb Lock C made in the same mould in which Exhibit Lieb Lock B was cast?

A. I cannot tell whether it was or not.

178 X Q. Was or was not Lieb Experiment 2 cast in the same mould in which Exhibit Lieb Lock B was cast?

A. It could not have been, as the Exhibit Lieb Experiment No. 2 was one of the first models made which was intended to be finished into a model to be used for castings.

179 X Q. Is not Exhibit Lieb Experiment 2 cast?

A. It is cast of brass or composition.

180 X Q. Can you give us any idea as to when Exhibit Lieb Experiment 1 was made, and by whom, and for what purpose?

A. I cannot exactly tell.

181 X Q. What is your best recollection on that subject?

A. I cannot recollect any more than that I have made experiments at various times, among which is included Lieb Experiment 1.

182 X Q. Was not Lieb Experiment 1 made to be, when finished, substantially like Lieb lock A?

A. It was not, because it was not heavy enough for that purpose, as it would not have admitted to make the recess in the center of the lock.

183 X Q. Is not Exhibit Lieb Experiment 1 an advanced state of construction of Lieb lock A?

A. I do not consider it so.

184 X Q. Why not?

A. Because it is not of the same shape as Exhibit Lieb Lock A.

290 185 X Q. I understood you to testify on your direct examination that Exhibit Lieb Experiment 1 is in an advanced state of construction of Lieb lock A. I must have misunderstood you, must I not?

A. I meant it to be so in connection with a lock made at that time, something like Exhibit Lieb Lock A.

186 X Q. Then Exhibit Lieb Experiment No. 1 is an advanced state of constructtion of Exhibit Lieb Lock A, is it not?

A. It is an advanced state of construction on a lock which we made previous, before we made locks like Exhibit Lieb Lock A, of similar kind.

187 X Q. Question repeated.

Objected to as already answered.

A. Not exactly.

188 X Q. Which was made first, Lieb Lock Experiment No. 1 or a lock like Lieb lock A?

A. Lieb lock experiment No. 1.

189 X Q. About when was experiment Lieb lock 1 made?

A. I do not recollect now.

190 X Q. Who made the moulds for the casting for that exhibit?

A. I do not recollect.

191 X Q. Was that exhibit cast by Ballard & Minchin?

A. I don't know; I can't tell.

192 X Q. Was Exhibit Lieb Experiment 1 cast by Terry & Co.?

A. I cannot tell.

193 X Q. As you compare Exhibit Lieb Lock C with Exhibit Lieb Experiment 1 and with Exhibit Lieb Lock B, are you still certain that the lock case of Exhibit Lieb Lock C came from a casting like that in Exhibit Lieb Lock B?

A. I am not.

JOHN W. LIEB.

Cross-examination closed.

Recess taken till 1.45 p. m.

291 1.45 p. m., after recess.

Counsel for defendant notes on the record that after the adjournment for lunch at the close of the cross-examination the witness informed defendant's counsel that he, the witness, was too indisposed to proceed with the examination, as said witness was suffering severely from a headache, and defendant's counsel therefore suggests an adjournment until Monday, the 11th inst., at 11 a. m.

Counsel for complainant states that he is ready to proceed or to adjourn, as counsel for defendant may select, but suggests that if the witness is so ill he should sign his deposition as far as it has been taken, so that it may not be lost should his illness prevent his further examination by complainant's counsel.

Counsel for defendant agrees to the signing of the deposition by the witness, but states that his right to redirect is not to be thereby shut off.

Adjourned to Monday, August 11, 1884, at 11 a. m.

NEW YORK, *August 11th*, 1884, 11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

The redirect examination of Mr. LIEB by WM. C. HAUFF, Esq.:

194 Re-D. Q. Do you know who made for you castings like that in Defendants' Exhibit Lieb Experiment and when first they made such castings for you?

Objected to as already answered in answer 180 and answers 191 and 192.

292 A. Yes, I do. Ballard & Minchin furnished us with castings like Exhibit Lieb Experiment 1, September 24th, 1877, of malleable iron, and previous to that date, from May 2d, 1877, up to the date of September 24th, 1877, of grey iron.

195 Re-D. Q. How did you ascertain such dates?

A. I ascertained those dates by examining the books of J. Lagowitz

& Co., which contain bills for goods furnished to them by Ballard & Minchin.

196 Re-D. Q. Is the Defendants' Exhibit Lieb Experiment 1 of malleable iron or of grey iron?

A. It is of malleable iron.

197 Re-D. Q. In your direct answer 14 I understand you to say that Defendants' Exhibit Lieb Experiment 1 was made between the first part of April, 1877, and July, 1877, and in your redirect answers 194 and 196 you say that Ballard & Minchin furnished you with castings like Exhibit Lieb Experiment 1, of malleable iron, September 24th, 1877. Please state how you wish said statements to be understood.

A. When I stated that the Experiments No. 1 and 2 were made between the first part of April, 1877, and July, 1877, I meant that the Exhibit Lieb Experiment No. 1 was of the same construction as Exhibit Lieb Experiment No. 1, and only showing the style of it aside from the material of which it is made.

198 Re-D. Q. In answer to cross-question 193 you stated that as you compare Exhibit Lieb Lock C with Exhibit Lieb Experiment 1 and with Exhibit Lieb Lock B, you are not certain that the lock case of Exhibit Lieb Lock C came from a casting like that in Exhibit Lieb Lock B. Please now examine said Exhibits Lieb Locks C and B and Exhibit Experiment 1 and state your knowledge on that subject.

Objected to as already answered to cross-question 193 and as incompetent if seeking a contradiction of that answer.

293 A. I am convinced by having looked at the books which contain bills of Ballard & Minchin, and find that they have furnished J. Lagowittz & Co. with locks of malleable iron on September 24th, 1877, and the Exhibit Lieb Lock C—that is, the lock case separate—is made of malleable iron, and the end pieces were made of grey iron, and the lock case of Exhibit C resembling the experiment No. 1, and being of the same material I can surely tell that lock case of Exhibit Lieb Lock C is constructed from the same pattern as experiment No. 1.

199 Re-D. Q. How are the letters and figures "Pat. Aug. 28, '77," put on locks in the manner in which they appear on Exhibits Leib Locks B and C?

A. They are stamped on the same by a stamp.

200 Re-D. Q. During what period of construction of the locks are those words and figures usually stamped on?

A. They were generally stamped before they were fastened to the end pieces of the lock, and in some cases after—before the handle was put in.

201 Re-D. Q. Have you found the stamp which was used for stamping those words and figures; and, if so, will you produce it?

A. I have found it and will now produce it.

Defendants' counsel offers the same in evidence as Defendants' Exhibit Leib Stamp, Aug. 11, 1884, J. A. S., ex'r.

202 Re-D. Q. In your direct answer 13 I understand you to state that Defendants' Exhibit Lieb Experiment 1 is in an advanced state of construction of Lieb lock A, and in cross-answers 183 and 184 I understand you to say you do not consider Lieb experiment 1 an advanced state of construction of Lieb lock A.

A. Because it is not of the same shape as Lieb lock A.

294 —. Will you please explain this apparent contradiction?

Objected to as already answered to cross-question 185, and as incompetent if seeking a contradiction of that answer.

A. When I stated that Lieb experiment No. 1 was in an advanced state of construction on Lieb lock A, I meant this only to refer to the general character and style of the lock, and the lock Exhibit Lieb Lock A is made and stamped up of sheet metal. This style of lock was first made by us of castings, after which or from which Lieb experiment No. 1 was made and considered by me as being of an advanced state of construction on the same.

203 Re-D. Q. In your cross-answer 140 you state you put the rivet pins into the ends of the lock case of Exh. Lieb Lock C for the purpose of keeping the lock case and the parts containing the handle fastenings close together on the frame. Will said pins accomplish such holding together without being clinched or not?

Objected to as immaterial.

A. Those rivet pins were put on there for the purpose of keeping the lock case and handle fastenings together, more particularly lengthwise, and acting hereby as what we term in the trade as steady pins.

204 Re-D. Q. And to act as steady pins must they be clinched or not?

Objected to as leading.

A. They need not to be clinched, as the rivet which passes through the lock case and the handle piece and also the frame will hold them both to the frame of the bag.

295 205 Re-D. Q. How is it that said parts in Exhibit Lieb Lock C appear to be bright or uncorroded, if at all?

Objected to as already answered to X Q. 41 and as incompetent of seeking a contradiction of that answer.

A. The bolt fastened into the lock frame is made of a superior kind of sheet iron, which is not subjected so much to corrosion as the other part of the lock or the lock case, and the Exhibit Lieb Lock C was kept as I found it in a bag, stored away in a closet, which closet stands on the first floor of our factory, where the bag was not so much exposed to the damp air, which causes corrosion in general.

206 Re-D. Q. In your cross answer 67, which the examiner will please read to you, referring to your patent 194,556, I understand you to say that you never made and sold constructions with the handle-holders made of separate pieces before you united them into one piece with the lock case, as shown in Exhibit Lieb Lock B. Did

I not understand you to say also that you made and sold a device like Exhibit Lieb Lock C, and in this device are not the handle-holders made of separate pieces before you unite them with the lock case?

Objected to as leading and suggestive, and also as it is not true, as stated in the question, that the witness has testified that he sold a device like Exhibit Lieb Lock C, and therefore as wholly incompetent and without foundation. Counsel for comp't here refers to answers 22 and 23.

A. When I said that I never made and sold devices like patent 194,556, with handle fastenings separated from the lock case, I meant that statement to refer to the said style as specified in the patent description and drawing, and not to the lock which was in the bag like Exhibit Lieb Lock C, and sold.

296 Counsel for comp't objects to the words "and sold" in the above answer as being, at best, hearsay.

Redirect is closed.

Recross by A. v. BRIESEN, Esq.:

207 Re-X Q. What makes you swear that that lock was sold; what knowledge have you?

A. My knowledge I derive from knowing that the bag was put in stock with other bags, and at that time our orders were so many for bags with locks of the several devices of Exhibit Lieb Lock A and B that we could not keep a stock of them but for a short time, and the bag which contains the device like Exhibit Lieb Lock C was put with the other bags. I came to the conclusion that it was sold with them.

208 Re-X Q. Where do Lagowitz & Co. keep their store?

A. Their store is now kept at 511 Broadway, in New York city.

209 Re-X Q. Did they have a store in New York in 1877?

A. Yes, they did.

210 Re-X Q. You know of your own personal knowledge, do you not, that that bag which you say had a lock like Exhibit Lieb Lock C is not now in possession of J. Lagowitz & Co.?

A. As far as my knowledge is, it is not.

211 Re-X Q. Do you swear that it is not?

A. I do, because——

Counsel for comp't objects to any explanation of the answer "I do," and calls the attention of the court to the reckless swearing of this witness in view of his previous answers in which he stated that he had no personal knowledge of the selling of this bag, and asks the court to measure the testimony of this witness by this last answer.

297 Counsel for def'ts calls the attention of the court to the fact that the witness was interrupted by complainant's counsel in the giving of his last answer, and that upon such interrupted answer complainant's counsel unjustifiably imputes to the witness "reckless

swearing," and, furthermore, calls the attention of the court to the fact that complainant's counsel has on previous occasions, without apparent cause, attempted to impute improper motives to this witness, and counsel for def'ts informs the witness that he has a right to give any explanation he may see fit to explain his position before the court, and now requests the witness to complete his interrupted answer.

Witness continues his answer: Because I am positive that it has been sent off with goods sent from our factory.

212 Re-X Q. Sent from your factory where—to the store or to customers?

A. To customers.

213 Re-X Q. To how many customers was it sent?

A. What is meant by was it? Is it meant in combination with the other bags?

214 Re-X Q. Any way you like. What I want to know is, to how many customers was the bag sent which you have sworn was sold and which you have also sworn contained a lock like Exh. Lieb Lock C?

A. It could have been sent only to one customer, as there was only one bag of it which contained a lock like Exh. Lieb Lock C.

215 Re-X Q. And it is not now in Lagowitz's store, is it?

A. It cannot be there, as I said it was sent from the factory to a customer.

216 Re-X Q. You swear, of your own knowledge, do you not, that it was sent from the factory to a customer?

298 A. I derive my conclusion that it was sent to a customer from the fact that from the time it was made and put in stock the said stock was sold and cleaned out during the time of two months after—of about two months after.

217 Re-X Q. Who cleaned out that stock?

A. It was cleaned out by the person who had charge of sending the goods away to customers, and I generally went around in the stock-room to see what accumulation there would be.

218 Re-X Q. Will you condescend to give us the name of the person who cleaned out that stock?

A. I do not recollect the name of the person.

219 Re-X Q. Can't you find from your books who that cleanly individual was?

A. I do not know whether we have books in possession yet which contain the names of those employed at our factory at that time.

Counsel for defendants objects to the use in the question of the words "cleanly individual" as being an attempt to misconstrue what the witness has said.

Counsel for complainant regrets to know that defendants' counsel appears to doubt the correctness of the description of that individual as contained in the question and is perfectly willing that the question be amended by substituting uncleanly for cleanly if such would suit defendants or the witness better.

Counsel for defendants states that his views are upon the record.

220 Re-X Q. Is all the testimony which you have given in this cause as true as your sworn statement, that a bag having a lock thereon like Exhibit Lieb Lock C was, to your knowledge, sold by J. Lagowitz & Co. within about two months from September, 1877?

A. According to my best knowledge and belief, it is.

299 221 Re-X Q. That particular bag was not sold in January, 1878, was it?

A. It could not have been sold in January, 1878, as it was sold during the time, as I stated, or sent to one of our customers.

222 Re-X Q. That particular bag was not sold in the year 1878, was it?

A. It could not have been sold during the year of 1878, as I stated before that it was sent to one of our customers during the time stated.

223 Re-X Q. It was not sold in 1879, was it?

A. I consider this question answered before in my previous answers.

224 Re-X Q. It was not sold in December, 1877, was it?

A. I consider this question answered in my previous answers.

225 Re-X Q. Well, answer this question again: Was or was not a bag having thereon a lock like Exhibit Lieb Lock C sold, to your knowledge, by J. Lagowitz & Co. in the month of December, 1877?

A. It was not, according to my knowledge and belief.

226 Re-X Q. Was there such a bag and such a lock thereon sold by J. Lagowitz & Co. in November, 1877?

A. It might have been sold in November, 1877, or October, 1877.

227 Re-X Q. Is that the best answer as to that alleged fact which you can make?

A. No; I say it must have been sold during the time of those two months mentioned.

228 Re-X Q. Then it was not sold in September, 1877, was it?

A. I don't think it was sold during September, 1877.

229 Re-X Q. But you know it was made in September, 1877, do you not?

A. It was made, according to my knowledge, during the last week of September, 1877.

300 230 Re-X Q. You mean between the 23d and the 30th days of September, 1877; is that it?

A. I don't mean between the 23d of September, 1877, because I did not have the castings on that day from which the lock was made, which castings we received, according to the bill, from Ballaud & Minchin on the 24th of September, 1877.

231 Re-X Q. Where is that bill?

A. The bill I inquired for at our store, where the bills are kept, and, on search for it requested by me, was told that it could not be found; but I have found a record of it in a bill book of yours, which I now produce for inspection and which, on page marked 224, contained the following entry: "September 24, 1877, Ballard & Minchin, 16 pieces of malleable lock frames, 64 cents." (Said book is handed to complainant's counsel and inspected by him and offered

in evidence by him, and he asks the officer to mark it as an exhibit in the cause.)

Defendants' counsel states that he has no objection to the witness offering said book in evidence, provided the witness has the authority to leave said book here in court.

The examiner marks the book Comp't's Exh. Lieb Book, Aug. 11, 1884, J. A. S., ex'r, and allows the exhibit to go in the custody of the witness, the said exhibit to be produced before said examiner when called for.

232 Re-X Q. Is that entry of Sept. 24, 1877, the first entry you find of malleable lock frames obtained from Ballard & Minchin?

A. It is of malleable lock frames. There is previous dates of bills of grey iron locks.

233 Re-X Q. By grey iron locks I suppose you mean locks like Exh. Lieb Lock B?

A. I do.

301 234 Re-X Q. You are quite positive Exh. Lieb Lock B is grey iron and not malleable, are you not?

A. I am.

235 Re-X Q. What makes you so positive of it?

A. Because I handled many of those locks during the time they were made and consider myself to be able to judge grey iron from malleable iron.

236 Re-X Q. How do you tell that difference?

A. Grey iron has generally a smoother appearance than malleable iron on its surface.

237 Re-X Q. Is it not also more brittle?

A. It is also more brittle.

238 Re-X Q. And you swear positively as an expert in those matters that Exh. Lieb Lock B is grey iron?

A. I do.

239 Re-X Q. Did you ever have things like Exh. Lieb Lock B made of malleable iron?

A. According to my recollections, we never had locks like Exh. Lieb Lock B made of malleable iron.

240 Re-X Q. You knew that well enough last Friday, didn't you?

A. Yes.

241 Re-X Q. Your Exh. Lieb Lock C is made of malleable iron, is it not?

A. Yes.

242 Re-X Q. That is quite certain, is it not?

A. Yes.

243 Re-X Q. You knew that well enough last Friday, didn't you?

A. I was not positive of it.

244 Re-X Q. Why not? Couldn't you tell at a glance?

A. I could not tell.

245 Re-X Q. How can you tell now?

A. Because I compared the locks closer and found that result. I also was strengthened in this by the item I found of Ballard & Minchin in our bill book, dated Sept. 24, 1877.

302 246 Re-X Q. Does that entry show you that Exh. Lieb Lock C has a malleable case—a fact, as you testified just now, you could not tell on Friday last?

A. When I looked at the item of Sept. 24th, on finding the book since Friday last, it came to my mind that I made Exh. Lieb Lock C of malleable iron, as if it would have been made of grey iron and its edges would have been reduced to such a thickness as the malleable iron is it would have easily broken in fastening onto the frame.

247 Re-X Q. Was Exh. Lieb Lock C while on a frame operated in connection with a catch that entered the lock?

A. I do not recollect whether it was or not.

248 Re-X Q. Was the frame that carried Exh. Lieb Lock C exactly like the frame which carried the counterpart of Exh. Lieb Lock C?

Objected to as immaterial.

A. I think it was, according to my recollection.

249 Re-X Q. Do you remember whether there was a catch on that other frame—the one that had the counterpart of Exh. Lieb Lock C?

A. Certainly there was.

250 Re-X Q. You remember that distinctly, don't you?

A. Yes; for the reason before we had the bags attached to the frame the locking part of the frame should be complete, which is generally the rule in our business.

251 Re-X Q. You refer to an entry in the book marked Lieb's book. In whose handwriting is that entry?

A. I think it is the handwriting of Mr. Alexander Frankel, who is still in the employ of J. Lagowitz & Co.

252 Re-X Q. Is that entry on one of the original pages of the book?

A. Yes; it is.

253 Re-D. Q. What do you understand by original pages in the last question?

303 A. I understand it to be the pages which belong to the other part of the book.

254 Re-D. Q. Are the original pages of that book numbered?

A. The original pages—that is, a part of the book has its pages or the number of its pages printed, and at the end of those printed pages, at the continuance, there are pencil marks of pages which were made by myself on last Saturday in connection with an index for bills of Ballard & Minchin, which index was made by me in pencil marks for convenience of looking up items of bills of said Ballard & Minchin when needed.

255 Re-D. Q. Is the entry of September 24, 1877, on one of the pages of the book which bear the printed numbers?

A. It is not.

256 Re-D. Q. Is the page which bears that entry of the same size and character of paper of any other page in the book which precedes it?

A. It is not.

257 Re-D. Q. What does the letter "w" mean which I find in pencil in the entry on page 176 of said book, and which entry reads, "August 10, 1877, Ballard & Minchin, 162; w lock frames 7c., $11.34?"

A. The mark is not intended to be "w," but is intended to be pounds, which mark I made myself at the time of making a record of such lock frames as have been furnished to us by Ballard & Minchin in order to cancel such from the book of orders, which I generally kept myself, as the preceding items of that same date were marked in quantity of gross, and the person who entered these items made an error in putting a ditto mark behind the number 162, which I corrected myself at the time I checked the bill off from my order book, and certainly one gross of lock frames could not amount to only seven cents per gross, which will be observed on previous items of bills contained in the same book.

304 258 Re-D. Q. Did you altogether have but 16 pieces like experiment No. 1 made for you?

A. No; we had a good many made afterwards, but not exactly of the shape as experiment No. 1.

259 Re-D. Q. Then you had only 16 of just that shape; is that true?

A. I cannot exactly tell the number of how many were made of that shape, as the edges of Exh. Experiment No. 1 were taken off after the locks were cast.

260 Re-D. Q. What is meant by Mall flats in the entry of June 20, 1877, page 137 of that book?

A. I cannot tell, because that flat was put there, as it seems to me, by Mr. Alexander Frankle, who made that entry.

261 Re-D. Q. But you know that it does not mean lock frames, do you not?

A. I don't think that it means lock frames, because Ballard & Minchin at that time did cast some other articles for us of malleable iron.

262 Re-D. Q. What other articles that were flat did they cast of malleable iron?

A. I cannot recollect.

263 Re-X Q. Did I understand you to testify to-day that things like Exhibit Lieb Lock A were made of cast iron before they were made of sheet metal?

A. The first were cast of grey iron and then of malleable iron, and after that they were stamped up of brass, like Exhibit Lieb Lock A.

264 Re-X Q. Who made the malleable iron castings for you of things like Exhibit Lieb Lock A?

A. Ballard & Minchin made locks of malleable iron for us on the style or principle and character as Exhibit Lieb Lock A, but a little different in shape at the middle part of the lock.

265 Re-X Q. When did you first have such locks as Exhibit Lieb Lock A made of sheet brass?

A. I cannot exactly fix the time, but it was after we had given up making those locks of malleable iron, which we did on account

305 of their frequent corrosion, even after they were nickeled, of which we had frequent complaints.

266 Re-X Q. Which was made first, Exhibit Lieb Lock A or Exhibit Lieb Lock C?

A. Exhibit Lieb Lock C was made first.

266 Re-X Q. Why didn't you make more than two devices like Exhibit Lieb Lock C?

Objected to as already answered.

A. Because I found them not practical.

268 Re-X Q. How did you find that out?

A. Because I came to the conclusion after they were made that they were made more expensive than Lieb Lock B, for which I had first intended to substitute the Lieb Lock C.

269 Re-X Q. Was Exhibit Lieb Lock C made before you obtained Exhibit Lieb Stamp?

A. I don't think it was.

270 Re-X Q. You have testified that you think you got that stamp October 8, 1877, and that you made Exhibit Lieb Lock C the last week in September, 1877, and that you made Exhibit Lieb Lock C after you got that stamp. Is that a correct explanation of your testimony?

Objected to as not being what the witness has said.

A. I did not testify that I got that stamp October 8, 1877, but I testified that I found an item in our petty cash book, which I consider an item for a bill of said stamp, paid on October 8, 1877, and we frequently or in most cases paid the bills due to Mr. Buechlein, who, I think, made that stamp in or during a time of from three to four weeks later, after they were presented.

271 Re-X Q. Do you find any bill from Mr. Buechlein in the Exhibit Lieb book for the said stamp?

A. I don't think there is any contained in there, as it was a small item, which we frequently not entered in the bill book, but in our petty cash book, when paid.

306 All after the words "in there" objected to as not responsive, as hearsay, and as untrue, the book showing entries of a great many small items, that of September 24, 1877, 64 cents, being in point, as also one on page 218, for 17 cents, and a great many others.

Counsel for defendant request complainant's counsel to carefully examine witness' last preceding answer before stating that it is not true, as the witness states that frequently small items were not entered in the bill book, not that they were never entered therein.

272 Re-X Q. Did you ever sell or put into stock locks like Exhibit Lieb Lock B without the patent stamp thereon?

A. There may have been some before I obtained the patents. After I have or had obtained or received the patent-mark stamp I gave strict orders to have all the locks stamped respectively with the said punch.

273 Re-X Q. Was that punch also applied to locks made on your other patent, 194,555?

A. It was not.

274 Re-X Q. Why not?

A. Because I stamped the lock No. of patent No. 194,555 with a different punch.

275 Re-X Q. Where did you stamp it?

A. We generally stamped them on the bottom of the ferrule or end cap.

276 Re-X Q. Was that stamp also made by Buchlein?

A. I think it was.

277 Re-X Q. At the same time as Exhibit Lieb Stamp was made?

A. I cannot tell exactly.

278 Re-X Q. Then you didn't know that the bill paid October 8, 1877, applies to the one or the other of those stamps?

A. I think it applies to stamp as Exhibit Lieb Stamp.

307 279 Re-X Q. Why to that and not to the other?

A. Because I was very anxious to have the Lieb lock B appear in the market as soon as possible with the stamp on it, as I liked that style of lock very much and it seemed to take well with our customers.

280 Re-X Q. Was Exhibit Lieb Lock C made to cure some defects you had found in Exhibit Lieb Lock A or B?

A. It was.

281 Re-X. How did you find those defects in Exhibit Lieb Lock A or B which Exhibit Lieb Lock C was to cure?

A. The defects of Lieb lock B were that the end pieces, where the handle fastening is attached, frequently broke in striking the ends of the ring around the handle cap into it, and my idea was that after I had brought the lock C to its construction I would substitute either an end of malleable iron or of stamped metal, which I abandoned after having decided not to make the lock Exhibit Lieb Lock C in larger quantities or any at all, and if I would have made them of stamped metal I could have secured them the handle ring more secure to it.

282 Re-X Q. How about the defects in Lieb lock A which Lieb lock C was to cure?

A. There were no defects to be cured on Lieb lock A, because that construction is of a different nature in fastening the handles to the lock.

283 Re-X Q. If I understand your answer to Q. 281 correctly, the defect of Lieb lock B to which that answer refers was that when you inserted an instrument into the hollow of the casting for spreading the ends of the sheet-metal portion that extend from the handle ring into said casting the casting would frequently break; is that right?

A. Yes; it is.

The further cross-examination of this witness is adjourned to Wednesday, August 13th, 1884, at 11 o'clock a. m.

308 NEW YORK, *August 13th*, 1884—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

The recross-examination of Mr. LIEB continued by A. v. BRIESEN, Esq.:

Counsel for complainant states that Exhibit Lieb Lock B has been accidentally broken, and that he is informed by the complainant that he, the complainant, broke it this morning while exhibiting it to one of his witnesses. Counsel for complainant desires to further cross-examine this witness with regard to the book, marked Lieb's book, which he does not see amongst the exhibits. He therefore calls for it.

Counsel for defendant calls upon the witness to state why complainant's counsel does not see said book here amongst the exhibits.

By complainant's counsel:

284 Re-X Q. Why is that book not here?

A. Because after having given my testimony last Monday I saw one of the firm of J. Lagowitz & Co. for permission to leave the book here, on which he refused that permission, which caused me not to bring the book along. As I thought that the item referring to my testimony was copied from the book at the time I gave my last testimony, it was not necessary for me to produce the book today.

285 Re-X Q. Who is the owner of Exhibit- Lieb Lock A, B, and C?

A. I consider J. Lagowitz & Co. to be the owner of them.

286 Re-X Q. Do they also own Exhibits Experiments 1 and 2?

A. I guess they do.

309 287 Re-X Q. They allowed you to leave those here, didn't they?

A. I did not ask them for.

288 Re-X Q. Who owns your two patents here in evidence?

A. I do.

289 Re-X Q. You stated that you have an interest in J. Lagowitz & Co.; in what manner have you an interest?

A. I receive a certain amount on the goods sold by them made under my superintendence, and also on use of my patents. What I mean by a certain amount on the goods sold is so much on every dozen of bags or frames sold; I have no interest in the trunks.

290 Re-X Q. Did you have the consent of J. Lagowitz & Co. to bring the book here on Monday last?

A. I did not ask for the consent.

291 Re-X Q. Why not?

A. Because I did not think they would have any objection to my bringing it here.

292 Re-X Q. You thought you had a right to bring it here, did you not?

A. I did think so.

Counsel for complainant states that he cannot proceed with the further cross-examination of this witness, so as to complete the same, without that book, and gives notice that if the book is not produced during every session on which it may be called for he will move that all reference thereto in the said testimony of this witness be expunged from the record.

Counsel for defendants states that as far as he is concerned he has no objection to the book being produced on every occasion on which it may be called for, and also states that he has understood the witness to inform defendants' counsel that he is willing to go
310 and bring said book here for the purpose of having the witness' cross-examination thereon proceeded with, and requests complainants' counsel to complete this cross-examination as far as possible without the book, and defendants' counsel will then ask witness to bring said book, and defendants' counsel regrets that said book is not here now.

293 Re-X Q. Who made the casting of Exh. Lieb Lock C—I mean of the lock case?

A. I think it was made by Ballard & Minchin.

294 Re-X Q. Are you certain that it was made by Ballard & Minchin?

A. I am.

295 Re-X Q. Since when are you certain that Ballard & Minchin made that casting?

A. I cannot give exactly a date, but I suppose the same was cast by Ballard & Minchin when first I thought of the affair, and was strengthened in my belief on examination of the book which contains the bill for castings, of which the Exhibit Lieb Lock C—that is, the lock case—is made from.

296 Re-X Q. Are you prepared to swear that the lock case of Exh. Lieb Lock C was made from a casting shaped like Exh. Lieb Lock B?

Objected to as already answered.

A. It was not made—the lock case I mean was not made—from a casting like Exhibit Lieb Lock B, but the end pieces which contain the handle fastenings were.

297 Re-X Q. Then why did you swear, in answers 62, 63, and 64, which I will read to you, that the lock case of Exhibit Lieb Lock C was made from a lock case like Exhibit Lieb Lock B?

A. I don't know why; I don't recollect.

298 Re-X Q. Was Lieb experiment 1 made as an experiment?

A. It was made in order to see how the shape would look by having the edges taken off.

311 299 Re-X Q. Then it was made as an experiment?

A. I think it was.

300 Re-X Q. Then when was that experiment made?

A. I don't recollect exactly the time.

301 Re-X Q. Which was made first, Exhibit Experiment No. 1 or Exhibit Lieb Lock C?

A. I don't recollect.

302 Re-X Q. Which was made first, Exhibit Experiment No. 1 or Exhibit Lieb Lock A?

A. I think Exhibit Lieb Experiment No. 1 was made before Exhibit Lieb Lock A was made.

303 Re-X Q. Are you sure it was?

A. As much as my knowledge and belief.

304 Re-X Q. Exhibit Lieb Lock C was made before Exhibit Lock A, was it not?

A. It was.

305 Re-X Q. When was Exhibit Lieb Lock A made, as near as you can tell?

A. I cannot tell the time.

306 Re-X Q. Can't you tell within a year?

A. I cannot; it was made after we had given up making locks of malleable iron.

307 Re-X Q. Was it made after you had discontinued altogether making goods like Exhibit Lieb Lock B?

A. I cannot tell exactly the time.

308 Re-X Q. Was Exhibit Lieb Lock A made to replace or take the place of structures like Lieb lock B?

A. It was not.

309 Re-X Q. What construction of lock took the place of Exhibit Lieb Lock B after you discontinued making the latter?

A. No particular construction; we just gave up making the lock.

310 Re-X Q. Did not Exhibit Lieb Lock A take the place of Exhibit Lieb Lock B after you discontinued making the latter?

A. I cannot say that it did.

312 311 Re-X Q. Why not to-day, when a few days ago you did? Hear the examiner read you question and answer 85.

A. Because we kept on making the locks like Exhibit A, irrespective of lock B, and having made the lock A all along.

312 Re-X Q. You have not the least idea, have you, when you first made a thing like Exhibit Lieb Lock A?

A. I cannot remember the time.

313 Re-X Q. Was your factory in East Newark in 1877?

A. It was.

314 Re-X Q. Is East Newark bounded by the Passaic river on one side and by Salt Meadows on the other?

A. I think it is.

315 Re-X Q. Where is the packing-room in that factory?

A. The packing-room is on the first floor.

316 Re-X Q. By first floor you mean the floor which is on a level with the ground or nearest the ground?

A. I mean the first floor is the first floor above the ground; there is a basement below it.

317 Re-X Q. You found Exh. Lieb Lock C in the spring of 1884 in a bag which was in a closet of your factory; when last before that had you opened or used that bag?

A. I did not find it in the spring, but found it either in July or June.

318 Re-X Q. You are perfectly positive, are you not, that Exh. Lieb Lock C was made in Sept., 1877?

A. As far as my knowledge and belief.

319 Re-X Q. Your knowledge and belief becomes stronger, do they not, as time passes?

A. I can't answer that question.

320 Re-X Q. I call your attention to the fact that you produced Exh. Lieb Lock C as an exhibit on the 2d of May, 1884, and
313 that your answer to X Q. 317 is therefore undoubtedly wrong, although it touches a period of time of less than four months. How do you account for that mistake?

A. I cannot account for it.

321 Re-X Q. Cross-question 317 repeated.

A. I cannot know or exactly tell the time, except as I remember that after having given my affidavit first I have found it after that.

322 Re-X Q. You have misunderstood my question. I want to know when last, before finding the exhibit, you had opened or used that bag.

A. I cannot remember.

323 Re-X Q. Did that bag contain any other things besides Exh. Lieb Lock C?

A. It may.

324 Re-X Q. Don't you know that it did? Was Exh. Lieb Lock C the only thing which you found in it?

A. No; I found also Exh. Lieb Lock A.

325 Re-X Q. In that bag?

A. I think I did.

326 Re-X Q. You refer to your first affidavit in your answer to the 321 cross-question. I'll show you now two of your affidavits, one dated April 17, 1884, and the other dated May 8, 1884. Do you recognize them as your affidavits?

A. This was the first (referring to affidavit dated April 17, 1884). This was the second (pointing to affidavit dated May 8, 1884).

Counsel for complainant offers in evidence said two affidavits, which are now on file in the clerk's office of this court, and the same are, respectively, marked Exh. Lieb First Affidavit and Exh. Lieb Second Affidavit, Aug. 13, 1884, J. A. S., ex'r.

327 Re-X Q. How do you think Exh. Lieb Lock A got into that bag?

A. I can't tell.

328 Re-X Q. You refer to Exh. Lieb Lock A in your first
314 affidavit of April 17, 1884, and the exhibit bears the mark of having been filed in court on the 19th of April, 1884. How long was it before April 17 that you found said exhibit in said bag?

A. I can't remember the exact date of it.

329 Re-X Q. Who called upon you to make your first affidavit?

A. I believe it was Mr. Charles Neumann.

330 Re-X Q. And, in response to his call, you took Exhibits Lieb Lock A and B to the notary and swore to the first affidavit; is that it?

A. Yes; I did.

331 Re-X Q. Were the Exhibits Lieb Lock A and B, at the time you made that first affidavit, already marked with the names Lieb lock A and Lieb lock B?

A. I suppose they were.

332 Re-X Q. Did any one go with you to that notary when you made that first affidavit?

A. I think Mr. Neumann did.

333 Re-X Q. When Mr. Neumann called upon you to make that first affidavit you looked in the bag and found Exhibit Lieb Lock A in that bag; how is it that you didn't find Exhibit Lieb Lock C in the bag at that time?

A. I cannot exactly recollect whether I found or took Exhibits Lieb Lock A and B from the place where they were at the exact time when Mr. Neumann called on me.

334 Re-X Q. What I wish to know is why you did not find Exhibit Lieb Lock C in that bag at the time you took Exhibit Lieb Lock A out of that bag?

A. I don't know and can't tell.

335 Re-X Q. Is it not supposable to your mind or in fact probable that Exhibit Lieb Lock C was not contained in that bag at the time you took Exhibit Lieb Lock A out of it?

A. I can't tell.

336 Re-X Q. If it be as I assume in my last question, can you tell or even guess how Exhibit Lieb Lock C got into that bag?

315 A. I can't remember anything particular about that.

337 Re-X Q. You don't remember, do you, whether Mr. Neumann was present at the time you took Exhibit Lieb Lock A out of that bag and thereby discovered the place in which you kept your antiquities?

A. I don't believe he was present.

338 Re-X Q. Was any one present at that memorable occasion?

A. I think not.

The further cross-examination of this witness adjourned till August 14, 1884, at 11 a. m.

NEW YORK, *August 14th*, 1884—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

The recross-examination of Mr. LIEB continued by A. v. BRIESEN, Esq.:

Defendants' counsel states that, in obedience to a *subpœna duces tecum*, the witness, John W. Lieb, attends to-day at 11 o'clock a. m., and has with him Complainant's Exhibit Lieb Book, but the witness has informed defendants' counsel that he is suffering from an attack of malaria and is not in a condition to testify to-day, and in regard to the book the witness has informed defendants' counsel that J. Lagowitz & Co. have not authorized the witness to leave said book

here, and defendants' counsel therefore suggests an adjournment, and both counsel join in a request to the examiner to take steps that the book be produced.

The examiner adjourns the further taking of testimony till Monday, August 18, 1884, at 11 a. m.

The witness is directed to produce the Exhibit Lieb Book the next day he testifies and also to sign his deposition.

JOHN W. LIEB.

316 NEW YORK, *August* 18, 1884—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

Witness sends word and certificate of a physician that he is ill.

Adjourned by consent to August 28th, 1884, at 11 o'clock a. m., and defendants' time for taking proofs is extended to and including the 6th of September, 1884.

NEW YORK, *August 28th*, 1884—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

Defendants' counsel submits to complainant's counsel a certificate from Doctor Lehlbach to the effect that Mr. Lieb, the witness, is still indisposed, under date August 27, 1884, and also two letters purporting to come from the witness Lieb and received by defendants' counsel this morning, and defendants' counsel asks the consent of complainant's counsel, in order that no time may be lost, that the examination of the witness Bernheim may be proceeded with pending the absence of the witness Lieb.

Counsel for complainant replies that the doctor's certificate is not of this date and that Mr. Lieb's letters say that Lieb is going to the mountains and wants to adjourn, say, for four or six weeks, and counsel is informed by the complainant, who is present, that Lieb is not sick enough to stay away from his own business, but he attends to his own business.

For these reasons counsel for complainant is unable to believe in the *bona fide* of Lieb's sickness, and unable also to consent to the examination of other witnesses until Lieb's deposition shall be closed.

317 Defendant's counsel replies that he has submitted to complainant's counsel all the information which defendant's counsel has regarding the sickness of the witness Lieb, and that it appears that the witness Lieb is well enough to testify and refuses without cause so to do. Defendant's counsel will move for an attachment to compel the attendance of said witness, and states that he has no objection to closing Lieb's deposition before proceeding with the examination of other witnesses, provided defendant is given time for that purpose, and that the request of defendant's counsel to proceed with the examination of Bernheim is made because of the shortness of defendant's time, which expires September 6th, 1884; and defendant's counsel asks whether complainant's

counsel is willing to grant defendant time to close Lieb's examination and then to finish the examination of other witnesses, and defendant's counsel states that he will subpœna the witness Lieb for Tuesday, September 2d, 1884, at 11 a. m.

NEW YORK, *September 2d*, 1884—11 o'clock a. m.

Met pursuant to adjournment.
Present: Counsel as before.

The recross-examination of Mr. LIEB continued by A. v. BRIESEN, Esq.:

339 Re-X Q. Do you wish your answer to redirect question 194 to be understood as stating that before September 24th, 1877, Ballard & Minchin furnished you grey iron casting like Exhibit Lieb Experiment 1?

The question and answer are read to the witness.

A. They did furnish us grey iron castings of the character like Exhibit Experiment 1, with the exception that the exhibit
318 has the edges taken off, and the grey iron castings, as much as I recollect, had sharp edges.

340 Re-X Q. Which did you make first—sheet-metal things like Lieb lock A or cast-metal things like Lieb experiment 1?

A. I made locks like experiment 1 first.

341 Re-X Q. Then Lieb lock A was an advanced state of construction of Exhibit 1, was it not?

A. It was made after I had given up making locks like Exhibit 1.

342 Re-X Q. To take their place?

A. Well, I know that we did not make any more, according to my recollection, like Exhibit 1 after we started making them of sheet metal like Exhibit Lieb Lock A.

343 Re-X Q. Is the bolt in Exhibit Lieb Lock B of the same material as the bolt in Exhibit Lieb Lock A?

A. I don't think it is.

344 Re-X Q. Is the bolt in Exhibit Lieb Lock C of the same material as that in Lieb lock B?

A. It does not seem to be so.

345 Re-X Q. You are satisfied, are you not, that the bright appearance of the bolt of Exhibit Lieb Lock C is due to the fact that said bolt is constructed of a substance wholly different from that composing the bolts in Exhibit Lieb Locks A and B?

A. I cannot positively say so.

346 Re-X Q. I understand you to testify that malleable iron rusts or corrodes more readily than grey iron. Is the malleable iron portion of Exhibit Lieb Lock C more rusted than the grey iron portion of the same exhibit and more rusty than the grey iron portion of Exhibit Lieb Lock B?

A. According to my knowledge, corrosion does not always act alike on either malleable iron or grey iron.

Answer objected to as not responsive to the question and as evasive.

Recross-examination closed.

319 Re-redirect by W. C. HAUFF, Esq.:

347 Re-re-D. Q. In your answer to recross-question 241 you state that your Exhibit Lieb Lock C is made of malleable iron. Do you, then, mean the whole lock is made of malleable iron?

Objected to as already answered in answer to redirect question 198.

A. I mean the lock case only.

348 Re-re-D. Q. In referring, in your answer to recross-question 254, to Complainant's Exhibit Lieb's Book, you refer therein to an index for bills of Ballard & Minchin, which index was made by you in pencil marks. Please point out that index.

A. (Witness points to the first paragraph or division of figures and writing on the upper part of that page of a fly-leaf facing page 1 of said book.)

349 Re-re-D. Q. In your answers to cross-questions 255 and 256 you state that the entry of September 24th, 1877, is not on one of the pages of the book which bears the printed numbers, and that the page which bears that entry is not of the same size and character of paper of any other page in the book which precedes it. Please explain how it is that said entry is not on one of said pages bearing printed numbers, but upon a different kind of page, as stated.

A. When I first found the book I asked Mr. Alexander Frankle, who entered most of the items in it, how the pages, which seemed to be annexed to the pages which have printed numbers on, came to be in the book. He answered me that he wanted to complete the entries for the month of September in said book, and therefore he annexed the same into it.

Answer objected to as hearsay.

350 Re-re-D. Q. In your answer to Re-X question 270 you state that you found an item in your petty cash book which you
320 consider an item for a bill of Defendant's Exh. Lieb Stamp, paid on October 8, 1877. Which did you do first, receive said stamp or pay therefor?

Objected to so far as it refers to petty cash book as incompetent, unless the same be produced.

A. I think that as frequently we had paid bills after receiving work from the party who made the stamp the stamp was received for some time before it was paid.

351 Re-re-D. Q. In recross-answer 271 I understand you to state that small items were frequently not entered in Complainant's Exh. Lieb Book. How is it that small items are found therein, as, for example, the item of Sept. 24, 1877, for 64 cents; as also one on page 218, for 17 cents, and others?

A. According to my knowledge those small items contained in said book are mostly for parties for which we had a large running account of goods received from them.

352 Re-re-D. Q. In your direct answer 7 I understand you to say that you commenced to make a device like Lieb lock A about the same time as you did Lieb lock B—that is, the last week of March, 1877—and in your recross-answers 305 and 306 I understand you to say that you cannot tell the time within a year when Exh. Lieb Lock A was made. Will you please explain said parts of your testimony?

Questions and answers 4, 6, 305, and 306 are read to the witness.

A. When I first stated that we made a device like Lieb lock A I meant the same, referring to its particular construction of handle fastening.

353 Re-X. Q. The Defendant's Exh. Lieb Lock C was marked as an exhibit herein May 2d, 1884. How is it, then, that you state in recross-answer 317 that you did not find Exh. Lieb Lock C, in the spring of 1884, in a bag in a closet of your factory, but found it either in July or June?

321 A. When I stated that I found it in July or June I was a little confused in my memory, as I was at that time suffering a little of my malaria.

354 Re-X Q. In your recross answer 334 you state you can't tell why you did not find Exh. Lieb Lock C in the bag at the time you took Exh. Lieb Lock A out of that bag. Do you recollect whether or not said bag contained things besides Lieb locks A and C at the time you took Exh. Lieb Lock A out of the bag?

A. It now comes to my mind that I was mistaken when I said that I took Exh. Lieb Lock A out of the bag, and I think that I found the same among some other locks, and I also state that at the time I first stated that I had taken it out of the bag I was suffering under the effects of malaria.

The answer is objected to by counsel for complainant as not responsive to the question and as volunteering a contradiction that had not even been called for by the defendant's counsel.

355 Re-re-D. Q. Supposing that a number of articles had been contained in that bag, would it or not have been possible for you on some occasions to have opened that bag and overlooked Lieb Lock Exhibit C, supposing the same to have been contained therein?

Objected to as leading and incompetent.

A. The bag in which I found Lieb lock C contained quite a number of other articles, and the Lock C might have easily been overlooked.

Re-redirect closed.

Re-recross by A. v. BRIESAN, Esq.:

356 Re-re-X Q. Are you suffering to-day under the effects of malaria?

A. I am very weak and exhausted, but feel somewhat improved.

322 357 Re-re-X Q. How long have you been suffering from malaria?

A. I cannot exactly state, as I felt the effects of it, more or less, at various times. I have suffered more or less within the last few months.

358 Re-re-X Q. Did you suffer from malaria when you made either of the two affidavits in this cause?

A. I cannot tell.

359 Re-re-X Q. When you do suffer from malaria the effect upon your mind is that you think Exhibit Lieb Lock A was found in that bag. Does the disease produce other analogous effects upon you?

Objected to as not being in accordance with anything witness has stated.

A. I cannot answer that question.

360 Re-re-X Q. When you do have malaria do you believe Exhibit Lieb Lock C was made in September, 1878?

The same objection.

A. I always state according to my best recollections at all times.

361 Re-re-X Q. That was your best recollection then, was it not, when you stated that you had found Exhibit Lieb Lock C in July or June, 1884, and not in the spring?

A. I stated as far as my memory was in condition at that time.

362 Re-re-X Q. Is the aforesaid memory in better condition to-day than it was on the day of your last previous examination?

A. As I stated before, I feel weak yet; but feel somewhat improved.

363 Re-re-X Q. In memory?

A. In my whole system.

323 364 Re-re-X Q. You testified about the index in Complainant's Exhibit Lieb's Book. Why did you make that index, and what is it an index of?

Objected to as already answered in recross answer 254.

A. I made it for my own convenience to look up items furnished for work for castings. I wanted to strengthen my memory.

365 Re-re-X Q. Did you take pains in making that index to make it reasonably accurate and complete of Ballard & Minchin entries?

A. I think I just marked down items of locks, and not other items for other kind of work.

366 Re-X Q. Then all the items to which that index refers are for locks; is that your present recollection?

A. There may be some other items with locks of one date. I was not very particular in making out that index.

367 Re-X Q. That index refers to pages 86, 103, 113, 125, 130, 137, 144, 155, 164, 167, 186, 195, 206, 220, and 224 of said book, and to no other pages showing bills of Ballard & Minchin, does it?

A. I cannot tell except looking the whole book over; they do, as much as I know.

368 Re-X Q. Take, for example, page 167, to which the index refers, and read the entry by reference to which you intended to strengthen your memory.

A. I don't see any entry there. As I said, I was not very particular in making out that index, as I thought it not to be of any particular value.

369 Re-X Q. I find in that book, on the following pages, to wit., 12, 14, 26, 37, 49, 52, 57, 58, 71, 72, 73, 93, 94, 111, 114, 134, 139, 141 154, 160, 171, 176, 180, 182, 196, 209, 216, 217, and 221, entries relating to Ballard & Minchin, none of which are referred to in your index; do none of those entries refer to locks or lock castings?

324 A. I cannot tell, as I stated that I was not particular in making out the entries.

370 Re-X Q. Can you tell what is meant by one gross sample A bolts, on page 221 of said book, and by one-half gross extra large sample bolts, on page 57?

A. I think that refers to trunk hardware.

371 Re-X Q. Is Exhibit Lieb's Book a book of original entry?

A. As much as I know about keeping that book, which is done by Mr. Frankle, the items are copied from bills.

372 Re-X Q. I will now propound to you a question that was already propounded to you on the day of your last examination, to wit, on the 13th of August, the day on which you said you were suffering from malaria, in order to see how your answer to-day will harmonize with that given on the previous day, and repeat question 293. (Question 293 repeated.)

A. I think Ballard & Minchin.

373 Re-X Q. Are you certain it was made by Ballard & Minchin?

A. To the best of my recollection.

374 Re-X Q. Question 317 is now repeated.

A. I can't tell.

375 Re-X Q. Where did you find Exhibit Lieb Lock A?

A. I think I stated an answer to that question to-day.

376 Re-X Q. Well, suppose you did; please do so again; tell us where you found Exhibit Lieb Lock A?

A. I think I found it with some other locks; it was either in an old stock-room or in our factory, according to my best recollection.

Re-redirect by W. C. HAUFF, Esq.:

377 Re-re-D. Q. Are you under a physician's care. If so, please state the physician's name and residence.

325 A. I am; the physician's name is, I think, Doctor Charles F. Lehlbach; the number of his house I don't know—in Washington street, Newark.

JOHN W. LIEB.

Sworn before me—
JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Wednesday, Sept. 3, 1884, at 11 a. m.

NEW YORK, *September* 3, 1884—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

The witness, Mr. GUSTAV BERNHEIM, is produced for further cross-examination:

Counsel for complainant desires the examiner to certify that on the 31st of July, 1884, on motion duly made for that purpose, an order was entered in this cause by direction of his honor Judge Wheeler, which order provides as follows, to wit: "That the witness Bernheim shall, on the day on which he shall be produced for further cross-examination, produce the said books for the inspection of the first entry therein, showing a sale of a lock like Exhibit Neumann First Lock, and that in case of his failure so to produce the same his testimony relating to Exhibit Neumann First Lock shall be expunged from the defendant's record, and shall in such case remain expunged therefrom without further order of this court."

The examiner's clerk so certifies.

326 81 X Q. Did you produce or will you produce the book in which, as you have heretofore asserted, an entry can be found of the sale of a lock like Exhibit Neumann First Lock?

A. I will not.

82 X Q. Why will you not? Is it because no such book exists in which such an entry can be found?

Objected to as immaterial and incompetent.

A. As I stated before, by the advice of counsel.

83 X Q. Did counsel so advise you since Judge Wheeler ordered you to produce the book?

A. I don't remember exactly when he advised me, whether it was before or after, or before and after, but I was advised not to produce them.

84 X Q. I presume that the counsel who so advised you did not himself see that book. Am I right?

The same objections.

A. I presume you are.

85 X Q. When you testified here about the advice of counsel; do you regard defendant's counsel to be your counsel?

The same objections, and as calling for an opinion.

A. I refer to defendant's counsel.

86 X Q. You are not one of the defendants, are you?

Objected to as implying that there is more than one defendant.

A. As far as I know, the suit is William Roemer against David Neuman. I am attorney-in-fact for the defendant.

87 X Q. Did you read the bill of complaint in this suit?

A. I don't remember.

327 88 X Q. Did you sign the answer in this suit?

Objected to as indefinite.

A. I don't remember that I signed any particular paper, but I know that I signed a good many papers.

89 X Q. In the affidavit annexed to the answer you swear that you have read the answer and know the contents thereof; is that statement true?

A. Undoubtedly true.

90 X Q. You have read this whole answer youself, have you?

A. I suppose so.

91 X Q. You swear you did in the affidavit; why do you say now you suppose so?

A. The whole knowledge I have at this distant date of having read the answer is the production of that affidavit.

92 X Q. Otherwise you don't recollect reading the answer?

A. Otherwise I don't remember if I read it or not.

93 X Q. You swear in said affidavit that the answer is true of your own knowledge. How did you understand that part of the answer which reads as follows: "David Neumann, impleaded with Gustave Bernheim?"

A. I paid very little attention to the legal phraseology of the matter, but gave my attention to the real merits of the case. My lawyer drew up the answer, and he knows undoubtedly the exact meaning of those words quoted "impleaded with." I did not mind them at all.

94 X Q. Why then did you swear that they were true of your own knowledge if you did mind them; is that the way you usually swear in this suit?

Objected to as an evident attempt to cast an improper reflection upon this witness.

328 A. That is blackguarding to ask me that question. I swore to certain facts of my own knowledge and belief and to other facts on information. I am sure that I was not served with any papers in this suit, and that I am not the defendant.

95 X Q. You now swear in your last preceding answer as follows: "I am sure that I was not served with any papers in this suit and that I am not the defendant." I have before me an affidavit which purports to have been sworn to by Gustave Bernheim on the 22d day of November, 1883, wherein the said Gustave Burnheim swears as follows: "On the 13th day of November, 1883, the said William Roemer served what appeared to be copies of the *subpœna ad respondendum* in this case upon me." I will show you that affidavit, and am sure that after you have sworn that you were not served with any papers in this suit you were not the man that made that affidavit?

A. When I said that no papers were served on me I understood that no papers good in law were served on me. Counsel for complainant knows very well that the first papers served on me were

thrown out of court on legal grounds, and that no suit has been commenced or could have been commenced on the paper he showed me, nor on another paper, perhaps, which has been served on me illegally.

96 X Q. Before this suit was commenced by the service upon you of the papers complained of in your affidavit of November 22d were you or your firm notified by Mr. Roemer that you infringed upon the patent in suit?

Objected to as assumptive.

A. Not that I remember.

97 X Q. Is this your affidavit (showing witness the affidavit of Gustave Bernheim), signed January 7th, 1884, filed January 12th, 1884?

A. It is.

329 98 X Q. In that affidavit you speak of a lock marked Exhibit Schloss Lock. Is this Exhibit Schloss Lock now shown you the thing to which that affidavit refers?

A. It is.

99 X Q. Where and when did you get that Schloss lock?

A. The firm of which I am a member got it many years ago in or from Paris.

100 X Q. Did you get it before you applied for your patent 163,629?

A. I cannot remember that, it is so long since, but my impression is that we did.

101 X Q. Does Exhibit Schloss Lock contain that which you claim as your invention in your patent 163,629?

Objected to as immaterial and calling for an opinion.

A. I haven't the slightest idea what the Schloss lock, which is also patented, contains, nor did I have the Schloss lock in my mind or before my eyes when I took out my patent. The only resemblance I can see between the Schloss lock and my lock is in both cases the lock boxes have open ends and separate pieces are used to close both ends of the lock case, which feature is no part of my patent.

102 X Q. I find that in your patent you claim as your invention the latch upon the sliding plate that is connected to the moving end of the bolt case in combination with the stationary portion of said case and the box-shaped base. Has not the Schloss lock all those features?

A. I don't know whether it has or not. We would have to open the lock to find out. As far as appearances go they are of different construction.

Counsel for complainant asks whether counsel for defendant is ready to stipulate as to which answers in the testimony of this witness are to be expunged from the record under order of July 21st, 1884.

330 Counsel for defendant replies that he is ready to stipulate as to the expunging of those answers which relate wholly to

Exhibit Neumann First Lock, and as regards those answers which refer in part to Exhibit Neumann First Lock defendant's counsel is ready to stipulate as to the expunging of those parts of said answers relating to Exhibit Neumann First Lock.

It is stipulated that the following questions and answers in the deposition of this witness shall be considered expunged and shall be so marked in the record, to wit: Question and answer 10, the statement following the same, questions and answers 11, 12, and X Qs. and answers 31, 32, 33, 34, 35, 37, 38, 39, and 40.

103 X Q. Is the lock marked Complainant's Exhibit Infringing Lock of your manufacture?

A. It looks very similar, but I am not quite positive about it.

104 X Q. When first did you make such locks?

Objected to as immaterial.

A. I don't remember.

105 X Q. Can you state within a year when first you made such locks?

The same objection.

A. I see that we have a patent on that lock dated February 22d, 1881; so I suppose we made it after that date; how long after I cannot tell, but I suppose within a year, which is as near as the counsel want to know.

106 X Q. You mean within a year after the patent, or what do you mean?

A. I mean a year after the patent, but I am not positive.

107 X Q. Do you make different sizes of locks like Exhibit Infringing Lock?

Objected to as assumptive.

331 A. It may be that we do, but I am not positive.

108 X Q. Is not lock marked Complainant's Exhibit Neumann Lock of your manufacture?

A. It is.

109 X Q. Was it not before you, together with Exhibit Infringing Lock, when you answered X Q. 107?

A. I said in that answer that I was not positive whether Exhibit Infringing Lock was of our own make or not.

GUSTAV BERNHEIM.

Sworn before me—
MR. GRIFFITH,
Examiner, &c.

Adjourned to Thursday, September 4th, 1884, at 11 a. m.

NEW YORK, *September 4th*, 1884—11 o'clock a. m.

Met pursuant to adjournment.
Present: Counsel for respective parties.

Adjourned to Saturday, September 6th, 1884, at 10 a. m.

NEW YORK, *September 6th*, 1884—10 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

Defendant's counsel offers in evidence a certified copy of British letters patent No. 136, granted in 1856 to Joseph Schloss, and the same is marked Defendant's Exhibit Schloss Patent, September 6th, 1884, J. A. S., ex'r.

Also a lock and frame, now on file with the clerk of this court, and the same is marked Defendant's Exhibit Schloss Lock, September 6th, 1884, J. A. S., ex'r.

332 Also certified copies of United States letters patent No. 132,412, granted October 22d, 1872, to Daniel Reed, which is marked Defendant's Exhibit Reed Patent, September 6th, 1884, J. A. S., ex'r.

Also a certified copy of United States letters patent No. 177,020, granted May 2d, 1876, to William Simon, which is marked Defendant's Exhibit Simon Patent, September 6th, 1884, J. A. S., ex'r.

Also certified copies of United States letters patent granted to William Roemer May 15th, 1877, No. 190,907, and September 18th, 1877, No. 195,233, and the same are marked, respectively, Defendant's Exhibit Roemer Patent No. 1 and Defendant's Exhibit Roemer Patent No. 2, September 6th, 1884, J. A. S., ex'r.

Also a certified duplicate of the model in the matter of the letters patent granted Gustav Bernheim May 25th, 1875, No. 163,629, and the same is marked Defendant's Exhibit Bernheim's Certified Model, September 6th, 1884, J. A. S., ex'r.

Also certified copies of British designs registered on behalf of Samuel Fisher August 14th, 1875, No. 293,557, and 5th of February, 1876, No. 298,207, said two copies being now on file with the clerk of this court in the case of William Roemer against Edward Simon and others, in this court, in equity cause No. 2152, and the same are marked, respectively Defendant's, Exhibit Fisher Design 293,557 and Defendant's Exhibit Fisher Design 298,207, September 6th, 1884, J. A. S., ex'r.

(Here follow photographs marked pp. 333, 334, 335, 336.)

337 Mr. A. FABER DU FAUR, a witness produced on the part of the defendant, being duly sworn, deposes and says:

1 Q. Please state your name, age, residence, and occupation, and state your qualifications as an expert in patent causes.

Ans. A. Faber du Faur; age, 58 years; I reside in New Jersey; I am an engineer and metallurgist, and have my office at 93 John street, in this city. During the last sixteen years I have been principally engaged as expert in patent causes in the United States courts. I have studied at a polytechnic school, and have had charge of the construction and operation of manufacturing establishments.

2 Q. Have you read and do you understand Complainant's Exhibit Patent herein?

No. 315
Former
Neumann
et al.
334

Arrow Plate objected
to as Bad.

Attach certificate that a
copy of the requisite will
be served on Exhibit filed
by the Assistant Commissioner
Duncan, and that the
placing thereon is that of
applicant's attorney
Mitchell Crisfield
Solicitor
Com. of Patents

Filed Mar. 10, 1881. Renewed
;10 to 17

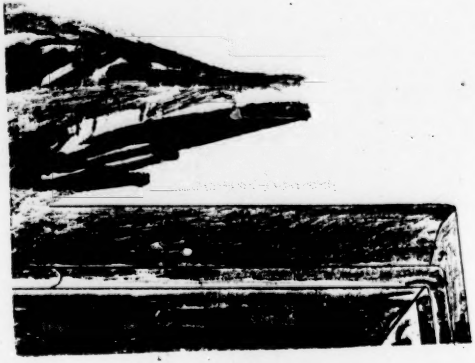
336

No 315
Roemer
v
Simon
et al

336

I hereby certify this to be a copy of a paper on file in my office, being an Exhibit filed in the suit of Roemer vs. Simon, and that the tracing hereon is that of a drawing on the original.

Timothy Griffith
Clerk U.S. Circuit Court
So. Dist of N.Y.



A. I have, and I believe I do.

3 Q. Have you seen and examined Exhibit Schloss Lock, Exhibit Schloss Patent. Exhibit Read Patent, Exhibits Fisher Designs 293,557 and 298,207, Burnheim 1875 Patent, Burnheim Model, and Burnheim Certified Model, Simon Patent, Roemer Patents No. 1 and No. 2, Defendant's Exhibit Jost First Plate and Jost Second Plate and Exhibit D 3, Defendant's Exhibit Jenkinson Lock and Lieb Locks A, B, and C, Defendant's Exhibit Flocke 1881 Patent, Complainant's Exhibit Flocke Loose Clip Patent, and Defendant's Exhibit Lieb 1877 Patent No. 1 and No. 2; also Defendant's Exhibit Neumann Lock No. 2 and Complainant's Exhibits Infringing Lock, Neumann Lock, and Neumann Satchel?

A. I have.

4 Q. Taking into consideration the state of the art prior to United States letters patent No. 208,541, what, in your opinion, is the invention which is recited and referred to in the claims of that patent, giving your reasons for any opinion you may express? In giving your answer please assume that Exhibits Schloss Lock, Schloss Patent, Read Patent, Fisher Designs 293,557 and 298,207, Bern-
338 heim 1875 Patent, Bernheim Model, Bernheim Certified Model, Simon Patents, Roemer Patents No. 1 and No. 2, Jost First Plate and Jost Second Plate and D 3, Jenkinson Lock, Lieb Locks A, B, and C, and Lieb 1877 Patents No. 1 and No. 2 are prior in date to the date of filing application for said patent 208,541.

A. Taking into consideration the state of the art prior to the date of the alleged invention, I find that the said invention, if it be invention, is necessarily restricted to the identical combinations shown and described and referred to in the claims of the same, namely, to the combination in a lock case of the central portion bent into a U form so as to form the top and sides of the lock case only, the bottom and ends being open, and the ends between which the lock mechanism is contained formed of separate pieces or blocks, inserted into the open ends of the central portion. It is also restricted to the above-mentioned combination, with the end pieces made with shoulders for defining their position relative to the central U-shaped portion, said shoulders being of the same shape as the U of the central portion.

Complainant's patent No. 208,541 is "for improvement in locks for satchels," and, as stated in the specification, "This invention relates to certain improvements in the construction of lock cases of the kind described in letters patent Nos. 190,907 and 195,233.

The last-mentioned patents, Nos. 190,907 and 195,233, show and describe lock cases with extensions at the ends for attaching handles, the arrangements being such that the parts by which the handles are attached to the bag pass through the hook-shaped parts of the lock case and are held between the lock case or its extension and the bag frame.

In 190,907 the hook is formed by a cylindrical elongation of the lock case; in 195,233 it is formed by notching the sides of the same.

In the devices shown and described in 190,907 and 195,233
339 inner transverse braces are formed within the lock shells at

short distances from the ends, said transverse braces being marked *b b* in 190,907, but not marked by letter in the subsequent patent No. 195,233. Between the two inner braces the lock mechanism is contained, and in both patents the drawings clearly show a spring abutting against one of the braces.

In 190,907 a removable bottom plate is shown and described which closes the case between the two braces *b b*, but not between the braces and the ends of the case, while in 195,233 no bottom plate is shown, and it is stated in the specification that by this new construction of lock case an extended bottom plate is dispensed with.

The principal object of the invention referred to in complainant's patent No. 208,541, and which relates to certain improvements in the construction of lock cases of the kind described in letters patent Nos. 190,907 and 195,233, is stated to be to reduce the expense of the lock case and to render the same more practical in form and construction.

It is also stated in the specification of complainant's patent that "The invention consists principally in forming the body of the lock case with open ends, and in combining the same with cast blocks or end pieces which are separately made," this part of the invention being referred to in the first claim of the patent.

While in the devices shown and described in complainant's earlier patents, Nos. 190,907 and 195,233, transverse braces are formed within the lock shell, in the device shown and described in complainant's patent 208,541 the central portion A of the lock case is simply a U-shaped piece of metal forming the top *a* and the sides *b b* of the lock case, the bottom and ends of said central portion A being open, while the transverse braces within the lock shell, between which the lock mechanism is contained and against which the spring or springs of the lock abut, form parts of the separate pieces B B, of cast metal or other suitable material, con-
340 structed to fit into the open ends of the body A, into which these blocks or plugs B B are inserted, as clearly shown in figure 2, which shows small projections on the inner faces of the end pieces B B for the reception of the ends of the springs, and also a similar small projection on the bolt C which is moved by means of the handle *g*. The other parts of the lock portion proper, which, as stated in the patent, is contained within the shell, A are not shown in the drawing.

It is also stated in complainant's patent 208,541 that each block should have a shoulder, *d*, to limit the degree of its insertion into the shell A or of the shell into the block. As shown in the drawing, this shoulder *d* abuts against the outer edge of the U-shaped central part of the lock case and is of the same U shape.

The drawing of comp's patent does not show the arrangement where, as stated in the specification, the shell is inserted into the block.

The specification of complainant's patent also states: "The blocks B may also serve, if desired, to secure the ends of the handle or the catches which close the jaws of the bag, and for other suitable purposes." From this statement it follows that the end pieces are not

necessarily provided with means for attaching handles or catches, and that the invention actually relates to improvements in the construction of lock cases of the kind described in letters patent Nos. 190,907 and 195,233, irrespective of the means there shown for attaching handles or catches—that is to say, that while in the above-mentioned earlier patents the lock case is provided with inner transverse braces and with perforated parts like *d d*, in 190,907, said transverse braces and perforated parts are omitted in the central U-shaped portion of complainant's patent 208,541, and form parts of separate end pieces

By my examination of the specification and drawings of complainant's patent 208,541 and of complainant's earlier patents, 190,907 and 195,233, I have arrived at the conclusion that
341 the body A referred to in the first claim of 208,541 is a U-shaped body, forming exclusively the top and sides of the central portion of the lock case, being entirely open at the ends; that the lock case is only completed and that the lock can only be finished by the addition of the end pieces which close the open ends and form the transverse braces between which the lock mechanism is contained and which support the spring or springs, the evident object of the invention being the making of the central part of the lock case without those transverse braces or end supports, simply U-shaped, and to close up the ends and supply transverse braces or end supports by separate end pieces B B, no other arrangement being shown, described, or suggested in the patent.

In Defendant's Exhibit Schloss Patent I find shown and described a lock case, figure 8, which is open at the two ends and has two end pieces, one of which, V, is fixed and forms an abutment for the lock spring *c*, while the other end piece, the piston E, is movable, performing the office of a bolt, which can be locked by a key, substantially the same arrangement I find in Defendant's Exhibit Schloss Lock.

Defendant's Exhibit Read Patent shows a lock for travelling bags with a strap or handle attached to the same, the fastenings for the handles being near the ends of the lock case, on top of the same.

In Defendant's Exhibits Fisher Design I find U-shaped lock cases with notched sides at or near the ends to receive and hold handle rings, substantially as shown and described in patent 195,233, and referred to in the claim of the same.

In Defendant's Exhibit Bernheim 1875 Patent I find shown and described a U-shaped lock case with one open end, which is closed by a movable U-shaped end piece, the open end being inserted into the movable end piece.

In Defendant's Exhibit Bernheim Model and Bernheim Certified Model I find U-shaped lock cases with open ends and end
342 pieces, into which the U-shaped shell is inserted. One of the end pieces is movable, while the other one is fixed on the shell, the end of the shell abutting against the inside of the end piece. The lock case is secured upon a hollow box-shaped base.

In Defendant's Exhibit Simon Patent I find an extended lock plate, with a handle attached to the same, and also with cross-creases

to receive the rings or other suitable devices for fastening the carrying strap to. I quote from the Simon specification as follows: "My invention relates to an improvement in travelling bags and satchels; and it consists, first, in placing the lock, fastenings, and ring loops all upon a single plate, and thereby dispensing with so many different fastenings;" also: "*a* represents the lock plate, which, instead of being made just long enough to receive the lock *c* alone, as is usual, is here made long enough to receive the lock fastening *d* and ring loops *e* all together. By this means all these parts can be attached to the frame of the bag or satchel at once, thereby dispensing with a large number of rivets or other fastenings and saving much time and labor.

"The lock, fastening, and ring loops may be of any construction desired, as they form no part of this invention."

Also: "It will be readily seen by the above-described construction that but two rivets at each end of the lock plate will serve to securely fasten all four parts to the back lock frame, thereby serving to dispense with so much skilled labor and to prevent the weakening of the frame.

"Cross-creases *j* are also struck up in the plate *a* to receive rings or other suitable devices for fastening the carrying strap to."

From the above it follows that, the parts not being restricted to the specific form and construction shown, the ring loops may be made in one piece with the bottom plate, the lock case may
343 extend to the ring loops and the ring loops may be formed like the cross-creases *j*, this being a common method of attaching rings.

Such an arrangement is shown in Def'ts' Exh. Jost First Plate and Jost Second Plate and Def'ts' Exh. D 3, where the ends of the lock case abut against a projection on the lock plate at or near the projection due to the cross-creases.

In Def'ts' Exh. Jenkinson Lock, I find a lock case to the top of which handle rings are attached by clips passing through holes on the top of the extended lock case at or near its ends.

In Def'ts' Exh. Lieb Lock A, I find handle fastenings such as shown and described in Def'ts' Exh. Lieb 1877 Patent No. 1, fastened upon an extended lock case near its ends, and in Def'ts' Exh. Lieb Lock B, handles for travelling bags, as shown and described in Def'ts' Exh. Lieb 1877 Patent No. 2, likewise secured upon an extended lock plate near its end.

In Def'ts' Exh. Lieb Lock C, I find handles as shown and described in Def'ts' Exh. Lieb 1877 Patent No. 2, secured upon end pieces inserted into the U-shaped ends of the lock case and provided with shoulders which define their position relative to the body of the lock case. The end pieces, however, do not form the end supports for the lock mechanism.

Thus at the date of complainant's patent it was not new to have ring loops or a similar device attached to the lock case or to an extended bottom plate, such being found in the Read patent, the Fisher designs, and the Simon patent, and Roemer patents No. 1 and No. 2, in Defendants' Exhibit Jost First Plate and Second Plate,

and Defendants' Exhibit D 3, Defendants' Exhibit Jenkinson Lock, and Defendants' Exhibit Lieb Lock A and Lieb Lock B.

Nor was it new to have separate end pieces, such being found in the Schloss patent and Bernheim 1875 Lock, and in Defend-
344 ants' Exhibit Lieb Lock C.

For the above reasons, in my opinion, the invention shown and described in complainant's patent and referred to in the claims of the same is, by the state of the art prior to the date of the alleged invention, restricted to the specific arrangement shown and described, and in particular to a central portion bent into a U form entirely open at the bottom and ends, and without any transverse pieces, between which the lock mechanism is contained, the invention consisting in forming those transverse braces in separate end pieces or blocks inserted into the open ends of the central portion, by which arrangement, as stated in the specification of complainant's patent, the expense of the lock case is reduced, and it is alleged that the same is more practical in form and construction, but the arrangement is such that without the end pieces the lock is incomplete, and can only be completed by inserting the end pieces, while in such devices like the lock in the Simon patent, the Defendants' Exhibit Jost First and Second Plate and Exhibit D 3, Defendants' Exhibit Jenkinson Lock, Defendants' Exhibits Lieb Locks A, B, and C the lock is complete without the handle fastenings.

Defendant's time for taking testimony is extended to and incldng September 8th, 1884.

Adjourned to Monday, September 8th, 1884, at 10 a. m.

345 NEW YORK, *September 8th*, 1884—10 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

The direct examination of Mr. A. FABER DU FAUR continued by W. C. HAUFF, Esq.:

5 Q. Do the devices Comp't's Exh. Neumann Lock, Comp't's Exh. Infringing Lock, Comp't's Exh. Neumann Satchel, and Def'ts' Exh. Neumann Lock No. 2 contain, in your opinion, the alleged invention recited and referred to in the claims of Comp't's Exh. Patent, having in view the state of the art prior to said patent, and give your reasons for any opinion you may express. In giving your answer you may refer to Def'ts' Exh. Flocke 1881 Patent and Comp't's Exh. Flocke Loose Clip Patent.

A. They do not.

Comp't's Exh. Infringing Lock and Comp't's Exh. Neumann Lock do not contain the invention shown and described in comp't's patent and referred to in the first claim of the same, because they are not made in three pieces, like comp't's lock case, because in said locks the body of the lock case is not made with open ends, but has substantially closed ends, and has no end pieces fitting into open ends, as in comp't's lock; on the contrary, the lock case proper has itself ends between which the lock mechanism is confined and the hooks

for the handles in Comp't's Exh. Neumann Lock and Comp't's Exh. Infringing Lock form parts of extended bottom plates, so that they could not be inserted into the central shell, as in complainant's device.

In Complainant's Exhibit Neumann Lock and Complainant's Exhibit Infringing Lock the lock is complete without the handle attachments, while in complainant's device the lock is not complete without the separate end pieces, between which the lock mechanism is contained.

346 Defendant's lock, Complainant's Exhibit Neumann Lock, and Complainant's Exhibit Infringing Lock, is in fact a modification of the lock shown and described in the Simon patent of 1876, of the locks Defendants' Exhibit Jost First Plate and Jost Second Plate, Defendants' Exhibit D 3, Defendants' Exhibit Jenkinson Lock, and Defendants' Exhibit Lieb Locks A and B, the difference being essentially only in form and design, while retaining the constructive feature of a lock case secured upon an extended bottom plate, with means for attaching rings or handles, an arrangement well known prior to the date of complainant's patent, the object of which patent is to dispense with an extended bottom plate and to make the central part simply U-shaped, confining the lock mechanism between separate end pieces.

Defendant's locks, Complainant's Exhibit Neumann Lock, and Complainant's Exhibit Infringing Lock are locks like the lock shown and described in Defendants' Exhibit Flocke 1881 Patent, in which patent it is stated that the lock case is provided with downwardly projecting fingers or pieces *e'*, which may close, or partially close, the ends of the lock case, and which may leave the opening *e*, into which the corner pieces *b* fit when in place on the bed plate. It is also stated that the lock case holds the ordinary locking mechanism and key bolt, and one of the end pieces *e* forms the support of the lock spring. The specification of the Flocke patent of 1881 clearly establishes the fact that defendant's locks, Complainant's Exhibit Neumann Lock, and Complainant's Exhibit Infringing Lock, which are made as shown and described in said patent, do not, as in complainant's device, have the central part formed with open ends and separate end pieces provided for closing up such open ends and for confining the lock mechanism.

347 Complainant's Exhs. Neumann Lock and Infringing Lock do not contain the invention referred to in the second claim of complainant's patent, because they do not have end pieces or plugs inserted longitudinally into an open central body and do not have U-shaped shoulders, such as referred to in the second claim of complainant's patent, and limiting the degree of insertion of the plugs in the longitudinal direction. On the contrary, in defendants' locks the position of the lock case upon the bed plate is fully defined by prongs passing through holes in the bed plate.

The locks, Defendants' Exh. Neumann Lock No. 2 and Complainant's Exh. Neumann Satchel, do not contain the invention shown and described in complainant's patent and referred to in the claims of the same, because said locks are complete in themselves without

the addition of the handle fastenings and have no open ends for the insertion of plugs between which the lock mechanism is confined, as in complainant's patent. The handle rings in Defendants' Exh. Neumann Lock 2 and Complainant's Exh. Neumann Satchel are not held between separate end pieces and the bag frame, as in complainant's patent; they are attached to the top of the lock case by clips passing through holes in the top of the extended lock case; said clips perform no other function than to attach the handle rings to the top of the lock case, and the holes or slits into which the clips are inserted have no other object but the insertion of such clips, so that the omission of the slits and clips leaves the lock complete without handle fastenings. Handle fastenings attached to the top of a lock case or to the top of an extended lock case have been known long prior to the date of complainant's patent, as illustrated by Defendants' Exh. Read Patent and Defendants' Exh. Lieb Lock A and B.

Direct closed.

Adjourned to Wednesday, Sept. 10, 1884, at 11 a. m., for the cross-examination of Mr. Faber Du Faur.

348 NEW YORK, *September 18th*, 1884—2 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel as before.

Cross-examination of A. FABER DU FAUR by Mr. A. V. BRIESEN:

6 X Q. Does Exhibit Read Patent, in your opinion, show and describe the invention which is described and claimed in Complainant's Exhibit Patent?

A. It does not.

7 X Q. Does Exhibit Fisher Design 293,357 show the invention which is described and claimed in Complainant's Exhibit Patent?

A. It does not.

8 X Q. Does Exhibit Fisher Design 298,207 show the invention which is described and claimed in Complainant's Exhibit Patent?

A. It does not.

9 X Q. Does Exhibit Bernheim 1875 Patent show and describe the invention which is described and claimed in Complainant's Exhibit Patent 3?

A. It does not, as I understand the invention described in Complainant's Exhibit Patent, but if it should be held that Complainant's Exhibit Patent covers any open middle piece in combination with a separate end piece, then the Bernheim patent shows a U-shaped middle piece combined with a separate end piece, which, however, is movable.

All after the word invention is objected to as not responsive.

10 X Q. Will you kindly, in giving your answers to my questions, give your own individual opinion without guessing at what might be held, as my questions are intended to ascertain how you construe

or understand the several exhibits, not how you guess what the finding may finally be. I now ask you how many separate end pieces you find in Exhibit Bernheim 1875 Patent.

349 Defendant's counsel objects to the restrictions sought to be imposed upon this witness by the first part of the last preceding question preceding the words "I now ask," as unwarranted and improper.

A. One.

11 X Q. And how many in complainant's patented structure?

A. Two.

12 X Q. What do you mean by the word "separate," in your answer to the 9th cross-question?

A. I mean that a cross-piece should be a piece by itself.

13 X Q. And what do you mean by the word cross-piece in your last answer?

A. I intended to say end piece.

14 X Q. Is Exhibit Bernheim Model a correct representation of that which is shown in Exhibit Bernheim 1875 Patent?

Objected to as immaterial.

A. It doesn't have all the parts shown in the Bernheim patent, and both end pieces are separate pieces.

15 X Q. Does, then, Exhibit Bernheim Model, in your opinion, embody the invention which is described and claimed in Complainant's Exhibit Patent?

A. It has in a lock case the combination of a U-shaped central body, having open ends, with end pieces that are applied thereto, and unless the invention shown and described in Complainant's Exhibit Patent and referred to in the first claim of the same be restricted to what is shown and described, then in my opinion Defendants' Exhibit Bernheim Model does contain the invention claimed in Complainant's Exhibit Patent. The lock in Defendant's Exhibit Model is not complete, but I assume that one of the
350 end pieces was intended to perform an additional function and to be made movable for that purpose. Since one of the end pieces, however, was evidently intended to be fastened, I do not think that it would have required invention to have fastened the other end piece in the same manner if the additional function should be dispensed with.

16 X Q. What do you understand by the words "that are applied thereto, substantially as herein shown and described," in the first claim of Complainant's Exhibit Patent?

A. I understand that the words "that are applied thereto" refer to the end pieces B B and mean that they are connected therewith, and that the words "substantially as herein shown and described" refer to the whole combination recited in the claim. What the words "substantially as herein shown and described" mean depends on the state of the art, and, as I understand, is actually the question at issue in this case. In my direct testimony I fully stated

what I understand the invention to be as restricted by the state of the art.

Answer objected to as not responsive.

17 X Q. Then, if you understand that the words "substantially as herein shown and described," in the first claim of complainant's patent, constitute the actual question at issue in this case, you also understand, do you not, that the second claim is not in issue, because it has not such words?

Objected to as not being what the witness has stated.

A. I did not say that the words were at issue, but their meaning—that is to say, whether, in view of the prior state of the art, defendant's device is actually substantially as what is shown in complainant's patent. The same is true as to the subject-matter of the second claim, to which the words "substantially as and for the purpose specified" are added.

351 18 X Q. How many fasteners do you find in Complainant's Exhibit Patent for holding the two end pieces and also the lock case in position on the frame?

A. According to the patent, either two or four may be used.

19 X Q. How many fasteners are necessary to secure the four parts of Exhibit Berheim's Model to one another and to the lock case, supposing that both end caps were made immovable?

A. They can be fastened by two.

20 X Q. Does Exhibit Bernheim Certified Model, in your opinion, show the invention which is described and claimed in the two claims of Complainant's Exhibit Patent, as you construe the claims of that patent?

A. My opinion in relation to Exhibit Bernheim Certified Model is the same as in relation to Exhibit Bernheim Model. In relation to the second claim of complainant's patent I have already stated that it embodies the elements of the first claim, with the addition of the shoulders *d*, which limit the insertion of the end plugs in the longitudinal direction. When the end pieces in Defendants' Exhibit Bernheim Model are slipped over the central U-shaped shell or the shell inserted into the end pieces, ends of the end pieces limit the degree of insertion and thus perform the functions of the shoulders *d* of the complainant's patent.

21 X Q. And as a mechanic you testify that these caps have shoulders, do you not?

A. I have not stated so. I have stated that the ends perform their functions.

22 X Q. Then they have no shoulders, have they?

A. They have not what is generally called a shoulder.

23 X Q. I observe that in figure 2 of complainant's patent the pieces B B are represented as being hook-shaped. Is that form or its equivalent found in Exhibit Bernheim Model or in Bernheim 1875 Patent?

Objected to as immaterial.

352 A. It is not.

24 X Q. Does Exhibit Simon Patent show that which, in your opinion, is shown and described in the two claims of Complainant's Exhibit Patent?

A. It does not show what, in my opinion, is shown and described in complainant's patent and referred to in the two claims of the same.

25 X Q. Does Exhibit Roemer Patent No. 1 (No. 190,907) show that which is described and claimed as new in Complainant's Exhibit Patent (No. 208,541)?

A. It does not.

26 X Q. Does Exhibit Roemer Patent No. 1 (195,233) show that which is described and claimed as new in Complainant's Exhibit Patent (No. 208,541)?

A. It does not.

27 X Q. Does Exhibit Schloss Patent show that which is described and claimed as new in Comp't's Exhibit Patent (No. 208,541)?

A. My opinion in regard to Exhibit Schloss Patent is substantially the same as in regard to Defendant's Exhibit Bernheim Model, but in this case the end pieces are inserted into the shell, one of the end pieces being likewise movable while the other one is fastened and forms the button for the spring, and the middle piece is a cylinder or tube. The end pieces, as shown, have shoulders.

28 X Q. Shoulders for defining their position relative to the body or middle piece?

A. They are not so shown, although they are capable of being so used.

29 X Q. Is Exhibit Schloss Lock a correct embodiment of what is shown and described in Exhibit Schloss Patent?

A. It is a substantially correct embodiment of the same, although the middle piece is U-shaped, the bottom being formed by a separate case—that is to say, a substantially correct embodiment of figure 8 in the drawing of the Schloss patent.

30 X Q. Do the shoulders on the end pieces limit or define their position relative to the body?

353 A. They do not.

31 X Q. Does Exhibit Jost First Plate, in your opinion, embody the invention which is described and claimed as new in comp't's patent?

A. It does not, as I understand the invention.

32 X Q. Does Exhibit Jost Second Plate, in your opinion, embody the invention which is described and claimed as new in comp't's patent?

A. It does not, as I understand the invention.

33 X Q. Does not Exhibit Jost Second Plate appear to be identical with Exhibit D 3?

A. They do not appear to be made from the same pattern, as is readily seen by a comparison of the openings in the bottom plate, but they are substantially the same devices, as far as I can see.

34 X Q. Does Exhibit Jenkinson Lock, in your opinion, embody

the invention described and claimed as new in Comp't's Exhibit Patent?

A. It does not, in my opinion.

35 X Q. Does Exhibit Lieb Lock A, in your opinion, embody the invention described and claimed as new in Comp't's Exhibit Patent?

A. It does not, in my opinion.

36 X Q. Does Exhibit Lieb Lock B, in your opinion, embody the invention described and claimed as new in Comp't's Exhibit Patent?

A. It does not, in my opinion.

37 X Q. Does Exhibit Lieb Lock C, in your opinion, embody the invention described and claimed as new in Comp't's Exhibit Patent?

A. It does not, if the invention is restricted to what is shown and described and in particular to the U-shaped central body with open ends, without any end walls between which the lock mechanism is confined, as fully referred to in my answer to the direct questions. If, however, the patent refers to any lock case with partly open ends and to any method of inserting end pieces into such open ends, then, in my opinion, Exhibit Lieb Lock C does embody the
354 invention described and claimed as new in Comp't's Exhibit Patent. It also has shoulders limiting the degree of insertion of the end pieces.

38 X Q. Do Exhibits Lieb 1877 Patents 1 and 2, in your opinion, show or describe the invention which is described and claimed as new in Comp't's Exhibit Patent?

A. They do not.

39 X Q. Does Exhibit Headley Lock, in your opinion, embody the invention described and claimed as new in Comp't's Exhibit Patent?

A. It does not, as I understand the invention.

40 X Q. Then you rule Judge Nixon to be in error when he decided that Exhibit Headley Lock is an infringement of comp't's patent in suit?

Objected to, as this witness is not called for the purpose of reviewing Judge Nixon's decision.

A. I do not rule at all, it being well known that a court may be compelled to render a certain decision when there is no proper defence made, nor do I say that a court should adopt my opinion even without having my reasons for the same.

41 X Q. Do you mean to insinuate by your last answer that the Headley suit was not properly defended; and, if not, what do you mean by your reference to the want of a proper defence?

Objected to, as the witness is not shown to have had any privity or connection with the Headley suit.

A. I meant to say that I don't know the reason for the decision, and, if my memory is correct, Mr. Clayton told me that there had been some difficulty about the defence.

42 X Q. Have you read the record in that case?

A. I glanced at it, but I could not say I read it.

43 X Q. Were you in court during the argument for the motion

for injunction in this suit to restrain the defendant from the manufacture or sale of locks like Exhibit Infringing Lock?

355 A. No; I don't think I was; I don't remember being there.

Adjourned to Saturday, Sept. 20th, 1884, at 11 a. m.

NEW YORK, *Sept.* 20, 1884—11 a. m.

Met pursuant to adjournment.

Present: Counsel for the respective parties.

Cross-examination of the witness, A. FABER DU FAUR, continued:

44 X Q. Would, in your opinion, Comp't's Exhibit Patent include in its description and claim the structure like Comp't's Exhibit Infringing Lock if the state of the art were disclosed by Exhibit Schloss Patent, Schloss Lock, Bernheim 1875 Patent, and Roemer Patents No. 1 and No. 2 (Nos. 190,907 and 195,233)?

A. I don't think it would, for the reasons given in my direct testimony.

45 X Q. I show you an affidavit entitled in this suit and bearing date January 11th, 1884, sworn to before W. Hauff, notary public, and ask whether you made that affidavit?

A. I did make this affidavit.

46 X Q. Its contents still meet with your approval, do they not?

A. They do.

Counsel for complainant offers in evidence said affidavit of this witness, which is on file in the clerk's office of this court and indorsed, "Papers in opposition to motion to amend bill and for preliminary injunction, filed in open court January 12th, 1884," and the same is marked Complainant's Exhibit A Faber du Faur Affidavit, September 20, 1884, J. A. S., ex'r.

47 X Q. Is that affidavit you speak of Defendants' Exhibit Bernheim Model? Can you point that model out to us?

356 A. To the best of my recollection said model was exactly like Defendant's Exhibit Bernheim Model, May 19th, 1884, J. A. S., ex'r.

48 X Q. Is, in your opinion, the fact that in Complainant's Exhibit Infringing Lock the end pieces are rigidly connected by a bottom plate essential for the purpose of comparison of said exhibit with Complainant's Exhibit Patent?

A. It is one of the essential elements of comparison, in my opinion, and this forming of an extended bottom plate prevents the insertion in a longitudinal direction into the central part and the limiting of the insertion in a longitudinal direction by shoulders. As I have already stated, Complainant's Exhibit Patent refers to improvements in the construction of lock cases, described in prior patents of complainant, where extended bottom plates are dispensed with, while

Complainant's Exhibit Infringing Lock certainly has an extended bottom plate with cross-creases for ring loops.

49 X Q. If you are right in finding that this connection of the end pieces in the infringing lock and the prior existence of the Schloss patent, the Bernheim 1875 patent, and the two prior Roemer patents take Exhibit Infringing Lock out of the scope of Complainant's Exhibit Patent, was not Judge Wallace wrong, having all these facts before him, in granting the motion, as appears by his order of January 12th, 1884, which I now hand to you?

Objected to as improper in assuming that this witness is called upon to sit in review of his honor Judge Wallace.

A. I am not aware of the reasons of the decision of his honor Judge Wallace, nor have I been called upon to criticise such a decision. I have been called upon to give my opinion as an expert, and adhere to the opinion I have given, leaving it to the court to decide whether the reasons which I have given for my opinion are sufficient to sustain the same or not.

357 Counsel for complainant offers in evidence the said order of January 12th, 1884, and the same is marked Complainant's Exhibit Order of January 12th, 1884, September 20th, 1884, J. A. S., examiner.

Counsel for complainant asks counsel for defendant to admit that the affidavit of Gustave Bernheim of January 7, 1884; Herman Oppenheimer of January 8, 1884; D. Van Santvoord of January 10, 1884; Carl Neumann of January 9, 1884; Robert Flocke of January 8, 1884; Albert O. Headley of January 9, 1884; David Neumann of January 9, 1884; Charles Küpper of January 10, 1884; Gustav Bernheim of January 11, 1884; Jonathan Koch of January 7, 1884; George B. Jenkinson of January 8, 1884, and Faber du Faur of January 11, 1884, all of which are tied together and indorsed, "Papers in opposition to motion to amend bill and for preliminary injunction, filed in open court January 12, 1884," were read and filed on behalf of the defense on the argument of the motion which resulted in the granting of Complainant's Exhibit Order of January 12th, 1884.

Counsel for defendant admits that, to the best of his recollection, said papers were read or referred to and filed on behalf of the defense on the argument of said motion.

Counsel for complainant offers in evidence the papers so indorsed and covered by the above request and answer, and they are marked as indorsed, to wit, "Papers in opposition to motion to amend bill and for preliminary injunction, filed in open court January 12, 1884, T."

50 X Q. Is or is not in Complainant's Exhibit Headley Lock a bottom plate rigidly joining the end pieces substantially like
358 the bottom plate rigidly joining the end pieces of Complainant's Exhibit Infringing Lock?

Objected to as immaterial.

A. There is a bottom plate with ends, but no separate end pieces, in both cases, the ends projecting beyond the lock case.

Cross-examination closed.
No redirect.

A. FABER DU FAUR.

Sworn before me—
JOHN A. SHIELDS, *Examiner.*

Counsel for defendant offers in evidence an order in this case by his honor Judge Wallace, filed April 25, 1884, denying a motion on behalf of complainant that locks like the locks attached to Complainant's Exhibit Neumann Satchel be embodied in defendants' quarterly statements, the affidavits of John W. Lieb, April 17, 1884, and Gustav Bernheim of April 12, 1884, mentioned in said order, being in evidence, respectively, as Exhibit Lieb First Affidavit and Complainant's Exhibit Bernheim Affidavit of April 12, 1884, and said order is marked Defendant's Exhibit Order of April 25, '84, September 20, '84, J. A. S., ex'r.

Adjourned to new notice.

359 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER, Complainant,
vs.
DAVID NEUMANN, Impleaded, &c., Defendant. } In Equity.

Please take notice that I shall proceed to take proofs for final hearing on the part of the defendant, under the 67th rule of the Supreme Court for courts of equity, as amended, and in accordance with the statutes in such cases made and provided and in pursuance of the rules and practice of this court, before John A. Shields, Esq., an examiner of this court, or other competent officer, at his office in the post-office building, in the city of New York, on the 2d day of April, 1884, at 11 o'clock in the forenoon.

I desire the evidence to be adduced in this cause to be taken orally.

You are invited to attend and cross-examine the witnesses produced. The examination will be adjourned to such time and place as may be required, without further notice.

Dated New York city, March 29, 1884.

Very respectfully,
W. C. HAUFF,
Defendant's Solicitor.

To William Roemer, Esq., compl't, and Messrs. Briesen & Steele, his counsel.

Endorsed: U. S. circuit court, south. dist. of N. Y. In equity. William Roemer *vs.* David Neumann, impleaded, &c. Notice
360 of taking testimony. W. C. Hauff, solicitor for defendant, 41 Park row, N. Y. city. Service of notice, of which the within

is a copy, is hereby admitted this 29th day of March, 1884. Briesen & Steele, counsel for complainant.

Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER, Complainant,
vs.
DAVID NEUMANN, Defendant. } In Equity.

Please take notice that I shall proceed to take proofs for final hearing on the part of the defendant, under the 67th rule of the Supreme Court for courts of equity, as amended, and in accordance with the statutes in such cases made and provided and in pursuance of the rules and practice of this court, before John A. Shields, Esq., an examiner of this court, or other competent officer, at his office in the post-office building, in the city of New York, on the 16th day of July, 1884, at two o'clock in the afternoon.

I desire the evidence to be adduced in this cause to be taken orally.

You are invited to attend and cross-examine the witnesses produced. The examination will be adjourned to such time and place as may be required, without further notice.

Dated New York city, July 12, 1884.

Very respectfully,

W. C. HAUFF,
Defendant's Solicitor.

361 To William Roemer, Esq., compl't, and Messrs. Briesen & Steele, his counsel.

Endorsed: U. S. circuit court, southern district of New York. In equity. William Roemer *vs.* David Neumann. Notice of taking testimony. W. C. Hauff, solicitor for defendant, 41 Park Row, N. Y. city. Service of notice, of which the within is a copy, is hereby admitted this 12th day of July, 1884. Briesen & Steele, counsel for complainant. It is consented that the taking of testimony under the within notice be adjourned to Thursday, July 24, 1884, at 2 p. m., same place, and defendant's time for proofs is hereby extended 8 days. N. Y., July 16, 1884. Briesen & Steele, counsel for complainant.

Circuit Court of the United States, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN *et al.* } In Equity.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

I, John A. Shields, an examiner duly appointed by the circuit court of the United States for the southern district of New York, do hereby certify that the foregoing are the proofs for final hearing

taken before me in the above-entitled cause on the part of defendants under and pursuant to the 67th rule of the Supreme Court of the United States as amended.

362 I do further certify that I am not of counsel nor attorney for either of the parties nor in anywise interested in the event of said cause.

I further certify that Mr. W. C. Hauff appeared on the part of defendants and Mr. A. v. Briesen appeared on the part of complainants in the taking of said proofs.

JOHN A. SHIELDS,
Examiner, &c.

The President of the United States of America to John W. Lieb, Esq., Greeting:

Subpœna Duces Tecum.

[L. s.]

We command you that, all business and excuses being laid aside, you appear and attend before John A. Shields, Esq., an examiner of the circuit court of the United States for the southern district of New York, on the fourteenth day of August, 1884, at 11 o'clock in the forenoon, to testify and give evidence in a certain action now pending, undetermined, in the circuit court of the United States for the southern district of New York, between William Roemer, complainant, and David Neumann, defendant, on the part of the defendant, and that you bring with you and produce at the time and place aforesaid a certain bill book of the firm of J. Lagowitz & Co. for the year or a portion of the year 1877, said book having been marked by said examiner "Compl't's Exh. Lieb Book, Aug. 11, 1884, J. A. S., ex'r," now in your custody; and for a failure to attend you will be deemed guilty of a contempt of court and liable to pay all loss and damages sustained thereby to the party aggrieved and forfeit two hundred and fifty dollars in addition thereto.

Witness the Honorable Morrison R. Waite, Chief Justice of
363 the Supreme Court of the United States, at the city of New York, the thirteenth day of August, 1884.

TIMOTHY GRIFFITH, *Clerk.*

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

William C. Hauff, being duly sworn, says: On August 13th, 1884, at New York city, I served the within subpœna on John W. Lieb by delivering to him a true copy thereof and at the same time showing him the within original, with the seal of the court thereon, and tendering to the witness three dollars for his fee and mileage.

W. C. HAUFF.

Subscribed and sworn to before me August 14th, 1884.

W. HAUFF,
[L. s.] *Notary Public* (29), *N. Y. Co.*

The President of the United States of America to John W. Lieb, Esq., Greeting:

Subpœna Duces Tecum.

[L. S.]

We command you that, all business and excuses being laid aside, you appear and attend before John A. Shields, Esq., an examiner of the United States circuit court for the southern district of New York, at his office, in the Post Office building, New York city, on the second day of September, 1884, at eleven o'clock in the forenoon, to testify and give evidence in a certain action now pending, undetermined, in the circuit court of the United States for the southern district of New York, between William Roemer, complainant, and David Neumann, defendant,
364 on the part of the defendant, and that you bring with you and produce at the time and place aforesaid a certain book marked "Compl't's Exhibit Lieb Book, Aug. 11, 1884, J. A. S., ex'r," by said examiner and the same being a bill book of the firm of J. Lagowitz & Co. for the year or a portion of the year 1877, now in your custody; and for a failure to attend you will be deemed guilty of a contempt of court and liable to pay all loss and damages sustained thereby to the party aggrieved and forfeit two hundred and fifty dollars in addition thereto.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, the 28th day of August, 1884.

TIMOTHY GRIFFITH, *Clerk.*

U. S. Circuit Court, South. District of New York. In Equity.

WILLIAM ROEMER *vs.* DAVID NEUMANN.

CITY OF NEWARK, COUNTY OF ESSEX, *State of New Jersey,* } ss:

Emil Trabold, of full age, and who being duly sworn, says: On the 29th day of August, 1884, I served the within subpœna personally upon John W. Lieb, the person therein named as witness, by then and there exhibiting to him the said original subpœna, with the seal of the court thereon, and delivering to him a copy thereof and paying him at the same time and place three dollars as and for his fees for traveling from Newark, New Jersey, which then was the residence of said John W. Lieb, to the place mentioned in
365 said subpœna, and return therefrom, and for one day's attendance as such witness.

EMIL TRABOLD.

Subscribed and sworn to before me the 29th day of August, 1884.

JOHN OTTO,

[L. S.] *Notary Public, Newark, N. J.*

At a stated term of the circuit court of the United States, held in and for the southern district of New York, at the court-house, in the city of New York, on the 16th day of May, 1884.

Present: Hon. William J. Wallace, circuit judge.

WILLIAM ROEMER *vs.* DAVID NEUMAN.

A motion having been made for leave to amend the answer herein, and the same coming on to be heard on the oral examination of John W. Lieb and on the affidavits of Gustav Bernheim, J. W. Lieb, and A. Faber du Faur for defendant, and upon the affidavit of Wil- Roemer on his own behalf:

Now, after hearing counsel for the respective parties, it is ordered that the defendant have leave (upon making the payment of $20, hereinafter mentioned) to amend the answer herein, and that
366 the answer thereupon stand amended, by inserting therein as the names of witnesses alleged to have had prior knowledge and use of the invention claimed in the complainant's patent as follows:

John W. Lieb, of Newark, New Jersey, at said Newark and New York city.

Jacob Lagowitz, of and at the same places.

Leopold Haas, of New York city, at said city and at Newark, New Jersey.

It is further ordered that the complainant may, if he so elects, on or before the first Monday in July, 1884, dismiss his bill, without costs, or he may then file a replication to the answer so amended.

It is further ordered that the defendants pay to the complainant or his solicitors the sum of twenty dollars as a fee for counsel for complainant for attending upon the examination of said Lieb and for opposing this motion.

It is further ordered that the oral examination of said Lieb heretofore taken be stricken out, and that, if the complainant file a replication to the answer as above amended, the defendants have thirty days wherein to take testimony in support of the answer, and compl't afterwards have sixty days wherein to take testimony in rebuttal.

WM. J. WALLACE.

Filed May 16th, 1884.

ROEMER *v.* NEWMAN. } DEF'TS' EXH. JOST ACCOUNT. April 22, 1884. J. A. S., Ex'r.

1877. Chas. Kupper. 5.

Sept.	11	20½	lbs.	comp.	casting	38	7	79
"	11	11	"	"		40	4	40
"	27	34	"	"		38	12	92
							25	01

367				
Sept.	11	Credit by scrap brass		7 23
		Paid	$15 00	17 78
Oct.	23	44½ lbs. comp. cast.	36	16 02
		16½ " " "	@ 40	4 60
				20 62
		Balance		2 78
				23 40
		Credit by 50 lbs. scrap brass		7 00
				16 40
			Paid.	
Nov.	24	34¼ comp. casting	36	12 33
		Credit by scrap brass and turnings		5 96
		Bal.		6 37
Dec.	23	Cash		5 00
		Cash		1 37
1878.			Paid.	
Feb'y	2	27½ lbs. comp. casting	36	9 90
	14	6½ " " "	40	2 60
				12 50
				37
			Paid.	12 87
June	7	22 lbs. comp. casting	36	7 92
	15	16¼ comp. casting	3	5 85
		18¾ lbs. castings.		
		17½ lbs. castings.		
		36¼		
		5 lbs. returned.		
368		31¼ comp. casting. 34.		
		67¾ 99 lbs. comp. cast.		33 66
		99		

ROEMER v. NEUMANN. } DEF'TS' EXH. JOST ACCOUNT. April 22, 1884. J. A. S., Ex'r.

Ch'l's Kupper. 6

Sept.	17	61 lbs. comp. casting	34c.	20 74
		3 gates of patterns, 1 ring gate, 1 long lock plates, and 1 catch pattern		14 00
				34 74
Sept.	25	18 lbs. comp. casting	34	6 12
		1 gate of loop patterns		8 00
				14 12
		June 7 to Sept. 25	96 29	
		Credit by brass	20 36	
		Balance	75 93	
October	23	Paid 2 notes at 40 doll., due Nov. 26.		
Oct.	3	17 lbs. comp. casting	at 34c.	5 78
	30	26 lbs. compt. casting	30	7 80
				13 58
Nov.	15	21½ comp. casting	30	6 45

Dec. 2. *Statement.*

		Mdse.	20 03	
Dec.		Cash	10 53	
		Ball.		9 50
Dec.	4	7 lbs. comp.	30	2 10
369				
	12	6¼ lbs. comp.	30	1 95
	30	1 gate of patterns		6 00
		2½ lbs. comp. casting	30	75
				20 30
		Credit by cash	2 50	3 70
		21 lbs. sheet iron	1 20	
				17 60
				12 80
				4 80
Jan.	31	By cash	8 00	12 80
		By brass	4 80	

Ball. paid in full.

DEF'TS' EXHIBIT LIEB 1877 PATENT No. 1. May 2, 1884. J. A. S., Ex'r. July 24, 1884.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted John W. Lieb, August 28, 1877, No. 194,555, for improvement in handles for traveling bags, &c.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be
370 [L. S.] affixed this 29th day of April, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

BENJ. BUTTERWORTH,
Commissioner.

No. 194,555. (2–155.)

The United States of America to all to whom these presents shall come:

Whereas John W. Lieb, of Newark, New Jersey, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in handles for traveling bags, &c., a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said John W. Lieb, his heirs or assigns, for the term of seventeen years from the twenty-eighth day of August, one thousand eight hundred and seventy-seven, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of
[L. S.] Washington, this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and seventy-
371 seven, and of the Independence of the United States of America the one — and second.

A. BELL,
Acting Secretary of the Interior.

Countersigned:
ELLIS SPEAR,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

JOHN W. LIEB, of Newark, New Jersey.

Improvement in Handles for Traveling Bags, &c.

Specifications forming part of Letters Patent No. 194,555, dated August 28, 1877 ; application filed June 5, 1877.

To all whom it may concern :

Be it known that I, John W. Lieb, of Newark, in the county of Essex and State of New Jersey, have invented certain new and useful improvements in the construction and attachment of traveling-bag handles, of which the following is a specification :

My invention relates to that class of curved handles which are hinged or jointed at their ends to the bag in such manner that they can fold down sidewise, and the object of the invention is to combine in one handle the advantages incident to different forms of handles hitherto in use and at the same time avoid their disadvantages.

Hitherto folding handles have been generally made and attached in one or the other of two ways. In one of these plans a wire is passed through the handle from end to end and the exposed
372 ends of the wire hooked into exposed eyes on the bag frame, while in the other plan divided caps or sockets are passed through ears on the bag frame and riveted to the ends of the handle. The central wire answers a good purpose in stiffening the handle and receiving the strain ; but the exposed ends are unsightly and objectionable, and are liable to become open and detached and the body of the handle, if made of leather or similar soft material as usual, having nothing to hold its ends down, rides up on the wire and gathers and wrinkles at the middle of the same. When the caps or thimbles are used to secure the handle the latter is permitted to stretch and to bend in such manner as to cramp the hand, and is frequently torn loose.

My invention consists in combining, with a handle having the central wire, caps or sockets applied in such manner that they serve the several purposes of giving a finished end to the handle, of concealing and protecting the ends of the wire and their connection with the frame, and of holding the ends of the handle from sliding upward on the wire.

The drawings represent my combination in various forms, in all of which, however, the advantages above enumerated are to be found.

Figure 1 represents a longitudinal central section of a handle and its connections made on my plan.

A represents the handle, made of leather or other suitable material, as usual, and provided with the central longitudinal wire *a*, the ends of which are clasped around horizontal pivots mounted in studs on base plates B, which latter are secured rigidly to the bag

frame, as shown. C represents socket of metal of a cylindrical form, having their lower ends closed and their upper ends slipped over and riveted fast upon the ends of the handle, as shown.

As the drawing indicates, the sockets are extended beyond the ends of the handle and mounted upon and around the pivots in such a manner as to completely surround and enclose the
373 ends of the wire. This is also clearly represented in Figs. 2 and 3, the former representing a transverse section and the latter a side view of one end of the handle, shown in Fig. 1.

The socket or cap represented in the above-named figures is made complete in one rigid piece, and is applied before the introduction of the pivot, which is inserted from one side.

The handle represented in figure 4 has the socket made and applied and the wire inserted in the same manner as in the preceding figures; but the ends of the wire, instead of being coiled around the pivot, are secured by a transverse metal pin firmly within the socket.

The handle represented in Fig. 5 has the end of the wire clasped around a stirrup on the bag and concealed by a divided or split socket, which is first passed through the stirrup and then closed upon and riveted fast to the end of the handle, as shown, the cap being in this case made with an inside recess to receive the wire, in order that it may fit down over the same snugly around the stirrup or pivot.

In Fig. 6 the socket is made and applied in the same manner as in Figs. 1, 2, and 3; but the wire, instead of being coiled around the pivot, is secured by a nut or washer seated in a recess in the lower closed end of the socket.

In Fig. 7 the construction is the same as in the preceding figure, except that the wire is bent to pass around and bear upon the pivot.

In all cases the socket is secured firmly to the end of the handle either by means of rivets or by crimping or creasing the edge of the socket down into the handle; and in all cases the wire is to have a firm metallic connection with the bag, so that it will receive a greater portion of the weight and strain.

374 I do not claim the use of the wire alone, nor do I claim, broadly, the application of a cap or socket to the end of a bag handle; but

What I do claim is—

The combination of a bag handle, a wire passing lengthwise through the same and connected with the stirrups on the bag frame, and metallic caps or sockets secured to the ends of the handle and pivoted on the stirrups, substantially as shown and described, so as to conceal the ends of the wire and answer the other purposes set forth.

JOHN W. LIEB.

Witnesses:
JAMES A. BRUEN.
A. C. FRANKEL.

DEF'TS' EXH. LIEB 1877 PATENT No. 2. May 2, 1884. J. A. S., Ex'r. July 24, 1884.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted John W. Lieb August 28, 1877, No. 194,556, for improvement in traveling-bag handles.

In testimony whereof, I, Benj. Butterworth, Commis-
[L. S.] sioner of Patents, have caused the seal of the Patent Office to be affixed this 29th day of April, in the year of our Lord
375 one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

BENJ. BUTTERWORTH,
Commissioner.

No. 194,556. (2–155.)

The United States of America to all to whom these presents shall come:

Whereas John W. Lieb, of Newark, New Jersey, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in handles for traveling bags, satchels, &c., a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said John W. Lieb, his heirs or assigns, for the term of seventeen years from the twenty-eighth day of August, one thousand eight hundred and seventy-seven, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of
[L. S.] Washington, this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and seventy-seven,
376 and of the Independence of the United States of America the one hundred and second.

A. BELL,
Acting Secretary of the Interior.

Countersigned:
ELLIS SPEAR,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

JOHN W. LIEB, of Newark, New Jersey.

Improvement in Handles for Traveling Bags, Satchels, &c.

Specification forming part of Letters Patent No. 194,556, dated August 28, 1877; application filed June 5, 1877.

To all whom it may concern:

Be it known that I, John W. Lieb, of Newark, in the county of Essex and State of New Jersey, have invented certain improvements in devices for attaching handles to bags and satchels, of which the following is a specification:

My invention relates to that class of joints or couplings for attaching leather and similar handles to bags and satchels, which consist of horizontal wrists or sleeves secured to the ends of the handle and seated in eyes or bearings on the frame of the bag.

The object of the invention is to overcome the usual unsightly and destructive bending of the ends of the handles where they enter the coupling; and to this end it consists mainly in providing the wrists or journals with sockets at right angles thereto, into which the ends of the handles may be inserted without being bent.

377 The invention also consists, however, in other minor details of construction, hereinafter fully explained.

Figure 1 represents a side view of a handle attached to a bag frame by means of my improved couplings. Fig. 2 represents a longitudinal central section through one end of the same. Fig. 3 represents a cross-section of the same on the line *x x*. Figs. 4, 5, and 6 are views illustrating the construction of the device in detail.

A represents the handle; B, the wrist or sleeves attached to the ends of the handle; C, the eyes or bearings, in which the wrists are mounted, and D the frame of the bag, to which the eyes are riveted or otherwise firmly secured.

As shown in the drawing, the wrists or sleeves B have a horizontal bearing in the eyes, and are each provided at one end, at right angles to the bearing, with a socket, *a*, to receive one end of the handle, which is inserted directly therein without being bent from its natural form and fastened in any suitable manner.

By thus constructing the couplings with the sockets *a* parallel with each other and at right angles to the axis of the sleeves or wrists the application of the handles is facilitated, the objectionable bending of its ends avoided, and the strain applied directly downward on the ends of the handle in the direction of their length, so that it has no tendency to bend, wrinkle, or crack them.

The essential features of my coupling is the sockets *a* applied to the sleeves or wrists at right angles, or approximately right angles, to their axes in order to avoid the bending of the ends of the handle.

The manner of constructing the couplings and the form and shape of the socket may be modified without departing from the limits of

my invention, provided they admit of the ends of the handle being applied without bending them to the wrist. The construction of parts shown in the drawing is, however, preferred to all others on account of its cheapness and strength.

378 As represented in the drawing, each wrist or sleeve with its socket *a* is made from a single piece of sheet metal by first stamping out a blank in the form represented in Fig. 4, and subsequently pressing and folding the same successively into the forms shown in Figs. 5 and 6. In this way the wrist and sleeve are made very light and strong and much cheaper than they could be were they formed separately and then united.

On the outer end of the wrist I form an annular flange, *e*, to retain it in place in the eye or bearing, and also to retain a cap or covering plate, which may be applied, as shown, to cover the outer end of the wrist and give the same a finished appearance. On the lower end of the socket I also form a flange to retain a cap or cover thereon.

Instead, however, of making the socket with the open lower end the blank may be modified in such manner as to produce a socket with a closed lower end.

The eye or bearing C shown in the drawings is of the ordinary and well-known form and constitutes no part of my invention. It consists of a base plate, *h*, provided with an opening to receive the ends of a band, *k*, which is clasped around the wrist and secured by bending its ends down under the base plate, as shown in Figs. 3 and 6.

As before stated, the handle may be secured in the sockets in any suitable manner, as, for example, by rivets, but it is preferred to pass a wire, *l*, lengthwise through the handle from end to end and down through the caps on the lower ends of the sockets, and to secure its ends by nuts, as shown, or by riveting them down.

The wire thus applied holds the handle securely in place and takes the greater part of the weight and strain, but as it is made the subject of a separate application it is only claimed in this patent in combination with the special coupling herein described.

379 While I have described the handle as mainly for bags, it is obvious that it may be used on trunks, satchels, valises, &c.

Having thus described my invention, what I claim is—

1. The combination of the eye or bearing C, the rotating wrist B mounted therein, and the transverse socket *a* rigidly connected to the end of the wrist, substantially as shown.

2. The combination of the eyes C, the wrists B mounted therein, and the handle A, having straight ends attached to the ends of the wrists transversely to their axes, substantially as shown.

3. The combination of the eye C, the wrist B, having the horizontal bearing and the transverse socket, and the handle A, having the wire passed through it from end to end and secured at the ends, as shown and described.

4. The combination of a bag frame, D, two eyes, B, thereon, two wrists or sleeves rotating horizontally in said eyes, and a handle, A,

having straight ends secured firmly to the wrists at substantially right angles to their axes.

JOHN W. LIEB.

Witnesses:
JAMES A. BRUN.
A. C. FRANKEL.

380 DEFEND'TS' EXHIBIT JENKINSON BILL. May 14th, 1884. J. A. S., Ex'r.

Claims for allowance to be made within 10 days of date of bill.

NEW YORK, *Febr'y 21st*, 1878.

Messrs. T. B. Peddie & Co. bought of Manhattan Brass Company, 1st Ave., 27th and 28th Sts., and 83 Reade St., N. Y. Sheet brass, brass and copper goods. Terms cash.

J. H. White. J. H. Crane. H. L. Coe.

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	lbs.	cts.	O K
12 doz. Ex. R. R. locks	4	50	54 00

R. W. C.
Forwarded by—

——— ———.

DEF'TS' EXH. BERNHEIM 1875 PATENT. May 19, 1884. J. A. S., Ex'r.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Gustav Bernheim May 25, 1875, No. 173,629, for improvement in lock for bags, &c.

In testimony whereof I, R. G. Dyrenforth, acting Com-
381 missioner of Patents, have caused the seal of the Patent Office to be affixed this 23d day of April, in the year of our Lord
[L. S.] one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

R. G. DYRENFORTH,
Acting Commissioner.

No. 163,629. (2–155.)

The United States of America to all to whom these presents shall come:

Whereas Gustav Bernheim, of New York, New York, has pre-

sented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in locks for bags, &c., a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Gustav Bernheim, his heirs or assigns, for a term of seventeen years from the twenty-fifth day of May, one thousand eight hundred and seventy-five, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof.

In testimony whereof I have hereunto set my hand and caused
[L. S.] the seal of the Patent Office to be affixed, at the city of Washington, this twenty-fifth day of May, in the year of our Lord one
382 thousand eight hundred and seventy-five, and of the Independence of the United States the ninety-ninth.

B. R. COWEN,
Acting Secretary of Interior.

Countersigned:
J. M. THACHER,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

GUSTAVE BERNHEIM, of New York, N. Y.

Improvement in Locks for Bags, &c.

Specification forming part of Letters Patent No. 163,629, dated May 25, 1875; application filed April 19, 1875.

CASE A.

To all whom it may concern:

Be it known that I, Gustave Bernheim, of the city and State of New York, have invented an improvement in valise locks, of which the following is a specification:

Valise locks have been made with a two-part case having end pieces, one of which is movable and connected to the catch so that by pressing the case endwise the lock is opened, and in valise locks of this character a bolt has been used that is operated by a key. I make the lock case with a hollow box-shaped base that raises the locks and allows the catch to pass in below the works of the lock, and I connect the latch with the moving end of the case by a plate that is above the base, and I employ a tumbler, hook, and yielding end to prevent the latch being moved when the lock is locked.

383 In the drawing, Figure 1 is a vertical longitudinal section.

Fig. 2 is a sectional plan at the line *x x*, and Fig. 3 is a cross-section at the latch.

The base *a* is box-shaped and attached by the end flanges *b* to the valise frame, and at one side of the box there is an opening at *c* for allowing the inclined catch upon the other part of the bag frame to pass in and be latched. The bolt or latch *e* is upon the under side of the plate *i*, and passes down through a mortise in the box *a*, and this plate *i* extends to and is connected with the movable end *f* of the lock case. The stationary portion *g* of the lock case is connected to the base *a* by the plates *l l*, that are fastened at their upper ends to said case, and their lower ends pass through slots in the base *a*, and they are bent or riveted, so as to hold the case *g* and base *a* firmly together. The latch plate *i* is slotted where it passes the plate *l*, and the stud plate *o* is also slotted to pass these plates *l*. Near one end of this stud plate *o* is an abutment, against which the helical spring or springs *v* act to press the moving end *f* of the case from the stationary portion *g*, and in so doing move the latch *e*. The reverse movement is by the pressure upon the end *f* unlatches the catch and allows the bag to be opened. The catch is shown by dotted lines in Fig. 1. The stud plate *o* carries the stud *r* for the key, there being a key-hole in line therewith in the case *g*, and upon this plate *o* the tumbler *t* is pivoted. Said tumbler has a hooked end that catches the stud 2 that projects up from the latch plate *i*, when said tumbler is turned in one direction, to prevent the latch being disconnected from the catch and thereby lock the valise. When the tumbler *t* is turned the other way by the key the latch is liberated. To prevent the tumbler moving accidentally and to hold it in position I employ the corrugated pressuer *u* that is at the moving end of the tumbler and is acted upon by the spring *w*. This pressuer is moved back by the swinging end of the tumbler as it passes from one corrugation to the next.

384 I claim as my invention—

1. The latch *e* upon the sliding plate *i*, that is connected to the moving end *f* of the bolt case, in combination with the stationary portion *g* of said case, and the box-shaped base *a*, into which the latch projects, substantially as set forth.

2. The latch plate *i*, sliding between the base *a* and stud plate *o*, and having a projection, 2, extending up through a mortise in the stud plate *o*, in combination with the tumbler *t*, swinging upon such stud plate, and the yielding pressure *u*, substantially as and for the purposes set forth.

Signed by me this 16th day of April, A. D. 1875.

GUSTAVE BERNHEIM.

Witnesses:

GEO. T. PINCKNEY.

CHAS. H. SMITH.

DEF'TS' EXHIBIT FLOCK 1881 PATENT. May 19, 1884. J. A. S., Ex'r.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Robert Flocke February 22, 1881, No. 238,037, for improvement in locks for traveling bags.

[L. S.] In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be
385 affixed this 9th day of January, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

BENJ. BUTTERWORTH,
Commissioner.

No. 238,037. (2–155.)

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

Whereas Robert Flocke, of Newark, New Jersey, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in locks for traveling bags, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Robert Flocke, his heirs or assigns, for the term of seventeen years from the twenty-second day of February, one thousand eight hundred and eighty-one, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and
[L. S.] caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-second day of February, in the year of our Lord one thousand eight hundred and eighty-
386 one, and of the Independence of the United States of America the one hundred and fifth.

A. BELL,
Acting Secretary of the Interior.

Countersigned:
E. M. MARBLE,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

ROBERT FLOCKE, of Newark, New Jersey.

Lock for Traveling Bags.

Specification forming part of Letters Patent No. 238,037, dated February 22, 1881; application filed December 20, 1880. (Model.)

To all whom it may concern:

Be it known that I, Robert Flocke, a citizen of the United States, residing at Newark, in the county of Essex and State of New Jersey, have invented a new and useful improvement in locks for traveling bags, of which the following is a specification:

My invention relates to that class of locks which are formed of a cast bed piece with loops for holding the handle rings and a separate case for holding the lock mechanism, the two being united together and riveted to the bag frames, and my invention consists of the lock case formed with downwardly projecting end pieces, which may close or partially close the ends of the case, in combination with the bed piece, constructed with openings for the end pieces of the case to pass through and with locking bridges, and it may also have corner or strengthening supports, which at the same
387 time may act as guides or supports to the corners of the case when in position on the bed piece, and also in the construction and combination of the parts, as hereinafter fully described.

In the accompanying drawings figure 1 is a sectional view of the the lock; Fig. 2 is a plan view of cast bed plate, and Fig. 3 is an end view of the lock case.

The bed plate A is formed with the abutting end pieces *a*. These end pieces are formed with the loops *c* for holding the rings of the handle. The casting may be strengthened by the corner pieces *b*, and the openings *d* are formed through the bed plate, through which the end pieces of the lock case pass, and the lower edge of the abutting pieces *a* form the bridges *i*, over which the end pieces of the case are clinched.

The lock case B is stamped up or formed of a properly shaped blank of sheet metal having the necessary openings for the catches and the key for operating the lock, and is provided with the downwardly projecting fingers or pieces *e*, which may close or partially close the ends of the lock case and which may leave the openings *e'*, into which the corner pieces *b* fit, when in place on the bed plate. The lock case holds the ordinary locking mechanism and key-bolt, and one of the end pieces *e* forms the support for the lock spring. The lock case being thus formed, it is united to the bed plate by passing the fingers *e* through the openings *d* in the bed piece, clinching them over the bridges *i*. The parts are thus secured together without the use of screws, rivets, or other fastenings.

The bed plate is formed with the screw or rivet holes *x* in the end pieces, by which the lock is secured to the bag frame.

Having thus described my invention, what I claim and desire to secure by letters patent is—

1. The bed plate A, formed with the abutting end pieces *a*, the bridges *i*, and the openings *d*, substantially as and for the purposes set forth.

388 2. The bed plate A, formed with the abutting end pieces *a* and with the bridges *i* and the openings *d* and with the corner supports *b*, substantially as described.

3. The bed plate A, formed with the bridges *i* and openings *d*, in combination with the lock case having the clinching fingers *e*, substantially as set forth.

ROBERT FLOCKE.

Witnesses:
H. A. WEST.
GEO. M. TITUS.

DEFENDANTS' EXHIBIT FLOCKE 1881 ASSIGNMENT. May 19th, 1884. J. A. S., Ex'r.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing executed by Robert Flocke, February, 1881, and recorded in Liber K 26, page 174. Said record has been carefully compared with the original, and is a correct transcript thereof.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be affixed [L. S.] this 21st day of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth.

BENJ. BUTTERWORTH,
Commissioner.

389 Liber K 26, p. 174.

Whereas I, Robert Flocke, of the city of Newark, in the county of Essex and State of New Jersey, did obtain letters patent of the United States for improvement in "locks for traveling bags," which letters patent are numbered 238,037 and bear date February 22d, 1881; and whereas I am now the sole owner of the said patent and of all the rights under the same; and whereas R. Neumann & Co., of the same place, are desirous of acquiring the entire interest in the same:

Now, therefore, to all whom it may concern be it known that, for and in consideration of the sum of one dollar to me in hand paid, the receipt of which is hereby acknowledged, I, the said Robert Flocke, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said R. Neumann & Co. the

whole right, title, and interest in and to the said improvement in locks for traveling bags and in and to the letters patent therefor aforesaid, the same to be held and enjoyed by the said R. Neumann & Co. for their own use and behoof and for the use and behoof of their legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my name and affixed my seal, at Newark, in the county and State aforesaid, this — day of February, A. D. 1881.

ROBERT FLOCKE. [L. S.]

Recorded Feb. 28th, 1881.
Ex'd: E. A. M.
H. M. H.

390 COMPLAINANT'S EXHIBIT POWER OF ATTORNEY. May 22d, 1884. J. A. S., Ex'r.

Know all men by these presents that I, David Neumann, of 147 West 4th street, in the city, county, and State of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Gustav Bernheim, of 127 East 62d street, in the city, county, and State of New York, my true and lawful attorney for me and in my name, place, and stead to bring, commence, conduct, prosecute, defend, and carry on all suits at law or in equity brought for or against me or in which I may be interested, to employ counsel, to make, execute, sign, seal, and deliver for me and in my name all pleadings, papers, and other documents appertaining to such suit or suits or which shall be necessary for bringing, commencing, prosecuting, defending, conducting, or carrying on such suit or suits, and for such purposes to sign my name whenever requisite, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal the eleventh day of February, in the year one thousand eight hundred and eighty-four.

DAVID NEUMANN. [L. S.]

Sealed and delivered in the presence of—

J. B. NONES.

COUNTY OF NEW YORK, } ss:
State of New York, }

391 On this 11th day of February, in the year 1884, before me personally came David Neumann, to me known and known

to me to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

[L. S.] J. B. NONES,
Notary Public, N. Y. County, No. 91 Duane Street.

I, John A. Shields, examiner in the above case of Roemer against Neumann, in the U. S. circuit court for the southern district of New York, hereby certify that the above is a true copy of the power of attorney and of the whole thereof produced by the witness Bernheim on this 22d day of May, 1884.

JOHN A. SHIELDS, *Ex'r, &c.*

Endorsed: David Neumann to Gustav Bernheim. Power of attorney, dated February 11th, 1884.

DEF'TS' EXHIBIT SCHLOSS PATENT. Sept. 6, 1884. J. A. S., Ex'r.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed has been carefully compared with the bound volumes of this office and is a true copy of the specification and drawing in the matter of the English letters patent granted Joseph Schloss January 18th, 1856, number 136, for piston bolt for travelling bags, &c.

In testimony whereof I, Benj. Butterworth, Com-
392 [L. S.] missioner of Patents, have caused the seal of the Patent Office to be affixed this 25th day of March, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

BENJ. BUTTERWORTH,
Commissioner.

A. D. 1856. No. 136.

Specification of Joseph Schloss. Piston Bolt for Travelling Bags, &c., Applicable to Double-Action Locks.

Letters patent to Joseph Schloss, of Wellington Chambers, Cannon St. West, London, county of Middlesex, merchant, for the invention of "a piston bolt or certain improvements in fastening travelling bags, porte-monnaies, cigar cases, writing desks, drawers, doors, and similar objects where locks, bolts, or clasps are employed."

Sealed the 23d May, 1856, and dated the 18th January, 1856.

Provisional specification left by the said Joseph Schloss at the office of the commissioners of patents, with his petition, on the 18th January, 1856.

I, Joseph Schloss, of Wellington Chambers, Cannon St. West, London, county of Middlesex, merchant, do hereby declare the nature

of the said invention for "a piston bolt or certain improvements in fastening travelling bags, porte-monnaies, cigar cases, writing
393 desks, drawers, doors, and similar objects where locks, bolts, or clasps are employed," to be as follows:

The said invention may be used either for mere fastening and bolting purposes or in combination with a double-action lock. In both cases it consists of a small tube or cylinder of any suitable metal or substance, with a piston acted upon by a spring and effecting the bolting and opening. When combined with a double-action lock the said piston is worked upon by a lever or spiral spring in the lock itself; the latter may be fixed in different ways to the object about to be fastened, locked, or bolted. In the latter case one end of the said cylinder or tube may be used to constitute what is commonly called a "puzzle lock."

Specification in pursuance of the conditions of the letters patent filed by the said Joseph Schloss in the Great Seal Patent Office on the 23d June, 1856.

To all to whom these presents shall come, I, Joseph Schloss, of Wellington Chambers, Cannon street West, London, county of Middlesex, merchant, send Greeting: . .

Whereas her most excellent majesty Queen Victoria, by her letters patent bearing date the eighteenth day of January, in the year of our Lord one thousand eight hundred and fifty-six, in the nineteenth year of her reign, did, for herself, her heirs and successors, give and grant unto me, the said Joseph Schloss, her special licence that I, the said Joseph Schloss, my executors, administrators, and assigns, or such others as I, the said Joseph Schloss, my executors, administrators, and assigns, should at any time agree with, and no others, from time to time and at all times thereafter during the term therein expressed, should and lawfully might make, use, exercise, and vend within the United Kingdom of Great Britain and Ireland,
394 the Channel Islands, and Isle of Man, an invention for "a piston bolt or certain improvements in fastening traveling bags, porte monnaies, cigar cases, writing desks, drawers, doors, and similar objects where locks, bolts, or clasps are employed," upon the condition (amongst others) that I, the said Joseph Schloss, my executors or administrators, by an instrument in writing, under my or their or one of their hands and seals, should particularly describe and ascertain the nature of the said invention and in what manner the same was to be performed, and cause the same to be filed in the Great Seal Patent Office within six calendar months next and immediately after the date of the said letters patent:

Now, know ye that I, the said Joseph Schloss, do hereby declare the nature of my said invention and in what manner the same is to be performed to be particularly described and ascertained in and by the following statement, reference being had to the accompanying drawing and to the letters and figures marked thereon—that is to say:

The said invention may be used either for mere fastening or bolting purposes or combined with a lock. In the first instance, the bolting or fastening apparatus is formed by a small cylinder or tube of steel, brass, or any other suitable metal or substance whose length may vary between one and three inches and whose diameter is from one-eighth to one inch or more, if required. This cylinder or tube contains on one end a piston, which works in it about half way of the length of the cylinder against a spiral spring fixed on the other end to a knob similar to that of the piston. The piston has a small pin secured to its lower part, which pin runs in a small opening in the female part of the clasp. Opposite to this pin there is fixed on the male part a hook of the ordinary shape, which, by a slight pressure, is forced to catch that pin, whereby the clos-
395 ing is effected. The opening is effected by a slight pressure on the knob of the piston.

The accompanying drawing will illustrate this simple mechanism.

(Here follows diagram marked page 397.)

Fig. 1 is the elevation and Fig. 2 the plan of the female part of the clasp or fastening; A, cylinder or tube; B, piston; *c*, spiral spring; *d*, pin; *e*, groove or opening. Fig. 3 is the plan and Fig. 4 the elevation of the male part of the clasp or fastening; A, hook on the clasp.

This mode of fastening or bolting is chiefly intended for small objects of daily use, such as porte-monnaies, ladies' bags, cigar cases, etc.

When applied to a lock for larger objects, such as travelling bags, chests, drawers, writing desks, doors, etc., the mechanism, although based on the same principle, is somewhat more complicated. Its nature will be best understood by the description of the accompanying drawing.

Fig. 5, section of the female clasp or fastening; Fig. 6, exterior elevation of the male clasp or fastening; A, plate, with two hooks, *a a*, which moves inside the box B of the lock and is worked upon by the piston C, in which the pin D is secured; E, pin, secured on the plate A and caught by the hook *b* of the tumbler F when unlocked or the hook *c* of the same piece when locked. The tumbler F is kept firmly down by the spring G.

The mere bolting is effected by the hasps H H (Fig. 6) being introduced into the corresponding openings of the box B and catching the hooks *a a*. The unbolting or disengaging of the hooks *a a* is effected by pressing the piston C from right to left, which imparts a similar motion to the plate A through the pin D. The clasp or fastening I (Fig. 6) is loosened, and the piston being freed from pressure returns to its former position through the action of the spring G and the inclined plane *e*, which carries the pin E back under the hook *b*. The hooks *a a* and the hasps H H being
396 rounded off, a mere pressure against the clasps or fastenings effects the bolting.

The locking is effected by turning the key in the direction of the arrow. The key acting upon the ledge *f* of the plate A drives the latter towards the right and, acting upon the ledge *g* of the tumbler F, raises it to allow the pin E to advance and to place itself under the hook C. The ledge at the left side of this hook prevents the plate A from advancing from right to left through the movement of the piston. The opening process is begun with the key, which raises the lever and drives backs the hooks *a a*, and the unbolting is achieved by the piston C.

A modification of this system consists — the lock above the bolt, as shown in Fig. 8, in which A is the piston, B the fixed knob, and *c* the spring acting against the piston, as in the arrangement first described. *d* is the hook which attaches the two clasps of the bag or other object when closed. The upper part of the piston A is formed with a projecting pin, *a*, to serve as a stop to prevent the bolt when locked being forced back without the key. The piston A is cut smaller in this part for a certain distance to admit a small piece of metal, *b*, made with two projections, *e f*, on which the key acts, as in common locks, and also a projec' ', which forces up the spring *h* in passing it. In order to loc. bag the key is put in and turned in the direction of the arrow, catching the projection *f* and causing the projection *g* to force up the spring *h*. The spring *c* drives the piston A, which had been held back by the pin *a* touching the spring *h*, as far as the lock will allow, taking with it the hook *d*. When the projection *g* has passed the spring *h*, which drops again into its former position, the stop *a*, being too long to pass it, prevents the lock from being forced. *i* prevents the bolt from being drawn out too far.

Another modification consists in adding to the bolt first
398 described a puzzle. As shown in Fig. 7, C^{11} is the cylinder or tube in which the piston C^{11} moves. The knob of the cylinder is movable and has an internal projection, x^1, that corresponds to the projection x of the piston C^{11}. By turning the knob of the cylinder C^1 the projection x^1 is brought downwards and meets the projection x of the piston C^{11}, by which the opening is prevented. By turning the said knob and bringing the space x^{11} downwards the piston C^{11} is allowed to advance and the opening may be effected. The piston in this case must be cylindrical. In all other cases it may be of any convenient form.

Having thus described the nature and particulars of the said invention for a piston bolt, I desire it to be distinctly understood that I do not confine myself to the precise details herein described, as such may be varied or modified without departing from the principle of action thereof. Likewise I do not confine myself to the strict figure or form of any mechanism herein described; but I claim as new and of my invention—

1°. The arrangement of a cylinder or tube containing a piston worked by a spring on the clasps or fastenings of a bag or other object for the purpose of securing them together, substantially as described in Figs. 1 and 2.

2°. The adaptation of the same principle to a lock, substantially as described in Figs. 5 and 8.

3°. The modification of the same system, by making the mechanism work as a puzzle-lock, substantially as described in Fig. 7.

In witness whereof I, the said Joseph Schloss, have hereunto set my hand and seal this sixth day of May, in the year of our Lord one thousand eight hundred and fifty-six.

JOSEPH SCHLOSS. [L. S.]

Ex'd:
J. A. W.
M. McK.

399 DEFENDANTS' EXHIBIT READ PATENT. Sept. 6, 1884. J. A. S., Ex'r.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted to Daniel Read October 22, 1872, number 132,412, for improvement in pockets for traveling bags.

In testimony whereof I, R. G. Dyrenforth, acting Commissioner of Patents, have caused the seal of the Patent Office to be [SEAL.] affixed this 23d day of April, in the year of our Lord one thousand eight hundred hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

R. G. DYRENFORTH,
Act'g Commissioner.

(2–155.)

No. 132,412.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

Whereas Daniel Read, of New York, New York, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in pockets for traveling bags, a description of which invention is con-
400 tained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Daniel Read, his heirs or assigns, for the term of seventeen years from the twenty-second day of October, one thousand eight hundred and seventy-two, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of [SEAL.] Washington, this twenty-second day of October, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-seventh.

B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
M. D. LEGGETT,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

DANIEL READ, of New York, N. Y.

Improvement in Pockets for Traveling Bags.

Specification forming part of Letters Patent No. 132,412, dated October 22, 1872.

To all whom it may concern:

401 Be it known that I, Daniel Read, of the city, county, and State of New York, have invented a certain new and useful improvement in outside pockets for traveling bags, of which the following is a specification:

Figure 1 represents a traveling bag to which my improved pocket has been applied. Fig. 2 is a detail cross-section of the same taken through the line *x x*, Fig. 1.

Similar letters of reference indicate corresponding parts.

My invention has for its object to furnish traveling bags provided with an improved outside pocket, designed especially for small traveling or belt bags for ladies' use, but which may be applied with advantage to other styles of bags, and which shall be simple in construction, neat in appearance, and convenient in use, and will add greatly to the beauty of the bag; and it consists in the outside pocket provided with an elastic mouth applied to the outer surface of the bag, as hereinafter more fully described.

A represents the body of the bag, about the construction of which there is nothing new. To the outer surface of one side of the bag A is secured a pocket, B, which may be make of cloth or other flexible material, and the bottom and side edges of which may be faced with the same material as that of which the body of the bag is made, or with other suitable material. The mouth of the pocket B is made elastic by means of rubber or other suitable material so arranged as to hold the mouth of the pocket down upon the side of the bag A even when the pocket may be distended by a handkerchief or other article or articles placed in it. The mouth of the pocket B may be covered with a flap or not, as may be desired.

The particular form of the pocket B and the shape of the facing,

when used, is entirely immaterial, so long as the pocket is placed upon the outside of the bag and is made with an elastic mouth.

402 Having thus described my invention, I claim as new and desire to secure by letters patent—

A traveling bag having an outside pocket made with an elastic mouth, substantially as herein shown and described and for the purpose set forth.

DANIEL READ.

Witnesses:
JAMES T. GRAHAM.
T. B. MOSHER.

DEF'TS' EXHIBIT SIMON PATENT. Sept. 6, 1884. J. A. S., Ex'r.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting :

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted William Simon, May 2, 1876, number 177,020, for improvement in traveling bags.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be [SEAL.] affixed this 1st day of August, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

BENJ. BUTTERWORTH,
Commissioner.

403 No. 177,020. (2–155.)

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

Whereas William Simon, of Newark, New Jersey, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in traveling bags, a description of which invention is contained in the specification, of which a copy is hereto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided ; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law :

Now, therefore, these letters patent are to grant unto the said William Simon, his heirs or assigns, for the term of seventeen years from the second day of May, one thousand eight hundred and seventy-six, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof.

In testimony whereof I have hereunto set my hand and caused

the seal of the Patent Office to be affixed, at the city of Washington, this second day of May, in the year of our Lord one [SEAL.] thousand eight hundred and seventy-six, and of the Independence of the United States of America the one hundredth.

CHAS. T. GORHAM,
Acting Secretary of the Interior.

Countersigned:
R. H. DUELL,
Commissioner of Patents.

404 UNITED STATES PATENT OFFICE.

WILLIAM SIMON, of Newark, New Jersey.

Improvement in Traveling Bags.

Specification forming part of Letters Patent No. 177,020, dated May 2, 1876; application filed April 12, 1876.

To all whom it may concern:

Be it known that I, William Simon, of Newark, in the county of Essex and State of New Jersey, have invented certain new and useful improvements in traveling bags; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it pertains to make and use it, reference being had to the accompanying drawings, which form part of this specification.

My invention relates to an improvement in traveling bags and satchels, and it consists, first, in placing the lock, fastening, and ring loops all upon a single plate, and thereby dispensing with so many different fastenings; second, in the manner of striking up the lock plate so as to — recesses to receive the ring loops whereby they are held more firmly and securely in position.

The accompanying drawings represent my invention.

a represents the lock plate, which, instead of being made just long enough to receive the lock *c* alone, as is usual, is here made long enough to receive the lock, fastening *d*, and ring loops *e* altogether. By this means all these parts can be attached to the frame of the bag or satchel at once, thereby dispensing with a large number of rivets or other fastenings and saving much time and labor.

405 The lock, fastening, and ring loops may be of any construction desired, as they form no part of this invention.

Just beyond the ends of both the lock and fastening the lock plate *a* is struck up from below, so as to form a concavity or recess, *i*, on top of the plate to receive the ring loops. These rings, being thus braced in position against side motion and prevented from moving by the clinches *o*, which pass down through slots in the plate *a*, are held more firmly and securely in position than they can be in any other manner.

It will be readily seen by the above-described construction that

but two rivets at each end of the lock plate will serve to securely fasten all four parts to the bag frame, thereby serving to dispense with so much skilled labor and to prevent the weakening of the frame.

Cross-creases *j* are also struck up in the plate *a* to receive rings or other suitable devices for fastening the carrying strap to.

Having thus described my invention, I claim—

1. In traveling bags or satchels, a lock plate having secured to it the lock fastening and ring loops, substantially as shown.

2. The lock plate *a*, having the recesses *i* formed in or on its surface to receive the ring loops, substantially as described.

3. In combination with the plate *a*, a lock and a fastening device, all secured together in the manner described, and adapted to be fastened to the bag frame, substantially as set forth.

In testimony that I claim the foregoing I have hereunto set my hand and seal this 6th day of April, 1876.

WILLIAM SIMON. [L. S.]

Witnesses:
MAX MARENSE.
FRED. WM. FELDMAN.

406 DEF'TS' EXH. ROEMER PATENT No. 1. Sept. 6, 1884. J. A. S., Ex'r.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted William Roemer May 15, 1877, number 190,907, for improvement in locks for satchels, &c.

In testimony whereof I, R. G. Dyrenforth, acting Commissioner of Patents, have caused the seal of the Patent Office to be [L. S.] affixed this 23d day of April, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

R. G. DYRENFORTH,
Acting Commissioner.

(2–155.)

No. 190,907.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

Whereas William Roemer, of Newark, New Jersey, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in locks for satchels, &c., a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a

407 part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said William Roemer, his heirs or assigns, for the term of seventeen years from the fifteenth day of May, one thousand eight hundred and seventy-seven, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of
[L. S.] Washington, this fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and first.

A. BELL,
Acting Secretary of the Interior.

Countersigned:
ELLIS SPEAR,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

WILLIAM ROEMER, of Newark, New Jersey.

Improvement in Locks for Satchels, &c.

Specification forming part of Letters Patent No. 190,907, dated May 15, 1877; application filed April 4, 1877.

To all whom it may concern:

Be it known that I, William Roemer, of Newark, in the
408 county of Essex and State of New Jersey, have invented a new and improved lock for satchels, carpet-bags, and the like, of which the following is a specification:

Figure 1 is a bottom view of my improved lock. Fig. 2 is a bottom view of the same as it appears when the bottom plate has been removed. Fig. 3 is a vertical longitudinal section of the lock. Fig. 4 is a top view of the bottom plate. Fig. 5 is a cross-section of the lock on the line *c c*, Fig. 1, and Fig. 6 a cross-section thereof on the line *k k*, Fig. 1.

Similar letters of reference indicate corresponding parts in all the figures.

This invention relates to certain improvements in the class of locks usually employed on the outer jaws of carpet-bags, satchels, valises, or similar receptacles.

The invention consists, first, in providing a lock case having transverse braces parallel to its ends with a removable bottom plate which closes the case between the two braces, but not between the braces

and the ends of the case. The invention also consists in constructing the lock case with upright ends, upright braces, and with perforated parts for admitting the fastening rivets or screws between said ends and braces.

It consists also in raising the perforated parts for receiving the fastening screws or rivets above the plane of the bottom plate of the lock, to leave a hollow beneath such perforated parts; also in combining the lock case with projecting bridges at its ends and with perforated lugs at the ends of said bridges, so that the latter may serve to receive ends of the suspending straps or handles of the bag.

A in the drawing represents the lock case or shell. The same is preferably made of cast metal and of quadrangular form, as shown in Figs. 1, 2, and 3, and is open at the bottom. *a a* are the ends of this case or shell. *b b* are inner transverse braces formed within the lock shell, at short distances from the respective ends *a a* thereof.

Between the two braces *b b* the lock mechanism is contained.

409 Between every brace *b* and the end *a* nearest thereto is a perforated part, *d*, of the lock case, through which one of the rivets or screws that fastened the lock case in position is passed. This perforated part *d* is raised or extended above the plane of the bottom plate B, which is put into the lock between the braces *b b*. By thus raising the parts *d d* I obtain a secure and strong means of holding the fastening rivets or screws which have heretofore been put through flanges projecting from the ends of the locks. Such flanges did not exceed in thickness the thickness of the body of the lock case, and, especially when the latter was cast of gray iron, were very apt to break off during the operation of riveting the lock to its place on the bag; but by raising this plate *d* in manner stated its resistance to blows is very much increased.

B is the removable bottom plate of the lock. Its length is substantially equal to the distance between the outer sides of the two braces *b b*, and its ends contain notches *e*, which engage over tongues *f f*, that are formed at the lower ends of the braces *b b*, all as clearly indicated in Figs. 1, 4, and 5. By this means the plate B is properly held in place when the lock is on the bag, and can be easily removed to give access to the lock mechanism when the lock case is unfastened from the bag; but it is clear that, instead of having the notches *e* on the plate, said plate may be made with projecting tongues to enter recesses in the braces *b*.

From the ends of the lock case project, lengthwise, a pair of bridges or bars, *g g*, whose outer ends connect with lugs *h h* that reach down to the frame of the bag or satchel, and that are perforated vertically to receive rivets or screws, which hold them secure on such frame. The bridges are raised from such frame and are rounded transversely, as shown in Fig. 6, and serve to receive the ends of the handle or strap by which the bag is carried. By

410 this means I combine in one single casting the three separate devices heretofore usually employed on bag frames, to wit, the lock case and the two staples for attaching the handles, and I secure these parts to the frame by four rivets or screws, where heretofore six were invariably employed.

I claim as my invention—

1. The combination of the lock case A, having the inner transverse braces *b b*, with the removable bottom plate B, which closes the case between the two braces, but not that between the braces and the ends A of the case, substantially as herein shown and described.

2. The lock case A, constructed with upright ends *a a*, upright braces *b b*, and with the perforated parts *d d* between said ends and braces, substantially as herein shown and described.

3. The lock case A, constructed with the perforated parts *d*, for receiving the fastening screws or rivets, said parts *d* being raised above the plane of the bottom plate of the lock to leave a hollow beneath them, substantially as herein shown and described.

4. The lock case A, made in one piece with the bars *g g*, which serve as staples for attaching a handle or strap, substantially as herein shown and described.

5. The combination of the lock case A with the projecting bars or bridges *g g* and perforated lugs *h h*, substantially as herein shown and described.

WILLIAM ROEMER.

Witnesses:
ERNEST C. WEBB.
F. v. BRIESEN.

411 DEF'TS' EXHIBIT ROEMER PATENT No. 2. Sept. 6, 1884. J. A. S., Ex'r.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of letters patent granted William Roemer September 18, 1877, number 195,233, for improvement in combined lock and handle for traveling bags.

In testimony whereof I, R. G. Dyrenforth, acting Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 23d day of April, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[SEAL.]

R. G. DYRENFORTH,
Acting Commissioner.

No. 195,233. (2–155.)

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

Whereas William Roemer, of Newark, New Jersey, has presented to the Commissioner of Patents a petition praying for the grant of

letters patent for an alleged new and useful improvement in combined lock and handle for traveling bags, a description of which invention is contained in the specification, of which a copy is here unto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

412 Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said William Roemer, his heirs or assigns, for the term of seventeen years from the eighteenth day of September, one thousand eight hundred and seventy-seven, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of

[SEAL.] Washington, this eighteenth day of September, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and second.

A. BELL,
Acting Secretary of the Interior.

Countersigned:
ELLIS SPEAR,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

WILLIAM ROEMER, of Newark, New Jersey.

Improvement in Combined Lock and Handle for Traveling Bags.

Specification forming part of Letters Patent No. 195,233, dated September 18, 1877; application filed August 10, 1877.

To all whom it may concern:

Be it known that I, William Roemer, of Newark, in the

413 county of Essex and State of New Jersey, have invented a combined lock and handle holder for traveling bags, &c., of which the following is a specification:

Figure 1 is a top view of my improved combined lock and handle holder; Fig. 2 is a vertical longitudinal section of the same; Fig. 3 a cross-section on the line *c c*, Fig. 2.

Similar letters of reference indicate corresponding parts in all the figures.

This invention relates to a new construction of lock case for traveling bags, satchels, and the like, whereby the same is made to retain the rings which connect with the handle, to dispense with an extended bottom plate, and yet to leave said rings movable in their bearings.

The invention consists in forming notches in the sides, near the ends of the lock case, which notches engage over the lower parts of the handle rings, all as hereinafter more fully described.

In the accompanying drawing the letter A represents the lock case, the same being of suitable construction, shape, and size, and adapted to be fastened to the frame of the satchel or bag by rivets or other suitable means. The ends of the lock case are, by notches *a*, which are cut into or formed in its side, made hook-shaped, as clearly shown in Fig. 2; and these hooks *b*, thus produced, serve to retain the handle rings B B in place. These handle rings are, as indicated in Fig. 3, preferably flattened at their lower parts, and are, with these flattened portions, placed under the hooks *b* of the lock case, and thereby secured to the satchel frame, to which the lock case is riveted, as already described. In these hooks, however, the rings are free to vibrate and free, therefore, to move with the handles, and the rings constitute, in consequence, a flexible connection between the handle and the bag or satchel.

By making the notches in the side the top of the lock case remains smooth and offers no obstruction to the free movement of handle and rings.

I claim—

414 The lock case made with the notched sides *a a* near its ends to receive and hold the handle rings B, substantially as described.

WILLIAM ROEMER.

Witnesses:
ERNEST C. WEBB.
F. v. BRIESEN.

DEF'T'S EX. ORDER OF APRIL 25, '84. J. A. S., Ex'r.

At a stated term of the circuit court of the United States for the southern district of New York, held at the court-rooms thereof, in New York city, on Friday, the 18th day of April, 1884.

Present: The Hon. William J. Wallace, circuit judge.

WILLIAM ROEMER
vs.
DAVID NEUMANN. } In Equity.

On reading and filing the notice of motion herein of March 25, 1884, and the papers and affidavit of William Roemer thereto annexed that an order be entered in this cause requiring the defendant to account for the number of locks like the locks attached to Complainant's Exhibit Neuman Satchel, and that such account be embodied in the quarterly statements filed by this defendant with the clerk of this court under order of the Hon. William J. Wallace, circuit judge, filed January 12, 1884, and upon reading and filing the affidavits of Gustav Bernheim, John W. Lieb, William

415 C. Hauff, and A. Faber du Faur in opposition to said motion, and after hearing A. v. Briesen, Esq., in support of said motion

and F. H. Betts, Esq., in opposition thereto, and due consideration had, it is now, on motion of William C. Hauff, defendant's solicitor—

Ordered, That said motion be, and the same is hereby, denied.

WM. J. WALLACE.

(Filed April 25, 1884.)

DEF'T'S EX. BERNHEIM'S CERTIFIED MODEL. Sept. 6, 1884. J. A. S., Ex'r.

(2–175.)

Schuyler Duryee, chief clerk.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a duplicate of the model, without the key, filed in the matter of the letters patent granted Gustave Bernheim May 25th, 1875, number 163,629, for improvement in lock for bags, &c.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be affixed [L. S.] this 1st day of August, in the year of — Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

BENJ. BUTTERWORTH,
Commissioner.

416 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the tenth day of December, in the year of our Lord one thousand eight hundred and eighty-five.

Present: The Honorable William J. Wallace, circuit judge.

WILLIAM ROEMER *vs.* DAVID NEUMANN & *al.*

The above cause coming on this day for final hearing upon pleadings and proofs—

Mr. Arthur v. Briesen makes the opening argument in behalf of complainant.

Further argument adjourned to 14th inst.

417 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the fourteenth day of December, in the year of our Lord one thousand eight hundred and eighty-five.

Present: The Honorable William J. Wallace, circuit court.

WILLIAM ROEMER *vs.* DAVID NEUMANN & *al.*

The argument in the above cause being resumed this day pursuant to adjournment—

Mr. v. Briesen concludes his argument in behalf of the complainant.

Mr. Frederic H. Betts is heard in behalf of the defendants.

Curia advisari vult.

418 United States Circuit Court, Southern District of New York.

ROEMER *vs.* NEUMANN.

WALLACE, *J.:*

The only question not disposed of at the hearing of this cause was whether the complainant is entitled to a decree, because locks like that known as "Exhibit A, Infringing Lock" are an infringement of the patent. The locks like those known as "Exhibit Neumann First Lock," "Exhibit Neumann Satchel," and "Exhibit Neumann Lock No. 2" were held not to be infringements.

No doubt is entertained that this lock is in all its essentials similar to the lock made by the complainant and shown in the drawings of his patent, and no hesitation would be felt in pronouncing it an infringement if the claims of the patent were good.

It is conceded by the counsel and by the expert for the complainant that unless the claims of the patent can be limited
419 by construction so as to make end pieces provided with notches or recesses to hold handle rings or catches constituents of the claims, they are void for want of novelty, in view of the prior state of the art.

The invention which is the subject of the patent relates to improvements in the construction of lock cases in the class of locks usually employed on the outer jaws of satchels, traveling bags, or similar receptacles, some kinds of which are made with notches or recesses so as to retain the handle rings of the satchel. The invention consists principally in forming the body of the lock case with open ends and in combining the same with cast blocks or end pieces, which are separately made in order to improve the lock case in simplicity of form and reduce the expense of manufacture. The body of the lock case is to be made of sheet metal or other suitable material bent into a U form, the bottom of the case being open and also the ends. The end pieces which are to be inserted into the body of the lock case in the specification are described as
420 follows: "B B are pieces of cast metal or other suitable material constructed to fit into the open ends of the body A, into which these blocks or plugs B B are inserted, as clearly shown in Fig. 2. Each block B should have a shoulder, *d*, to limit the degree of its insertion into the shell A or of the insertion of the shell into the block.

"In use on a satchel or carpet-bag, the ends B B, after being inserted into the shell A, or *vice versa*, in manner stated, are fastened to the satchel or bag by a bolt or pin that passes through an aperture, *e*, of the shell A, and through a corresponding aperture, *f*, of the block B, there being one such bolt or pin at or near each end of the piece A; but the plugs or end pieces, B B, may also be secured

by additional or separate bolts, if desired, and so also may the shell A. The blocks B may also serve, if desired, to secure the ends of the handle or the catches which close the jaws of the bag, and for other suitable purposes."

The claims are as follows: "1. In a lock case, the combination of the body, A having open ends, with the end pieces, B B, that are applied thereto, substantially as herein shown and described. 2. The
421 end pieces, B B, of a lock case, made with shoulders *d*, for defining their positions relative to the body A, substantially as and for the purpose specified."

There is no reference in terms, either in the specification or the claim, to notches or recesses in the end pieces. The drawings, however, show the end pieces formed with notches or recesses, and the patentee incidentally refers to a use to which the end pieces may be applied, in which inferentially the notches or recesses would be necessary. This falls far short of making the notches or recesses an essential feature of the invention. It cannot be doubted that the reference in the specification is to be treated merely as recommendatory of a form of lock plate for a specified use such as is shown in the drawing.

The claim is not fairly capable of the construction contended for by the complainant, and the bill must be dismissed.

422 (Endorsed:) United States circuit court, southern district of New York. Roemer *vs.* Newmann *et al.* Equity. No. 2920. Opinion. Wallace, J. U. S. circuit court. Filed Dec. 31, 1885. Timothy Griffith, clerk.

423 Circuit Court of the United States, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMAN and GUSTAV BERNHEIM. } In Equity.

Take notice that on Friday, the 8th day of January, 1886, at the opening of the court on that day or as soon thereafter as counsel can be heard, we shall move before one of the judges of this court, at the court-room thereof, in the general post-office building, New York, that a rehearing of this case on its merits be had, and for such other and further relief as to the court may seem proper.

In support of such motion we shall read the disclaimer filed by the complainant in the patent in suit in the United States Patent Office, on the 2nd January, 1886, the pleadings, proceedings, and filed papers herein.

A copy of such disclaimer will be served upon you as soon as it is received from the Patent Office.

Yours truly, BRIESEN AND STEELE,
Compl't's Sol's.

New York, 4 Jan., 1886.

To W. C. Hauff, solicitors for def't.

424 [Endorsed:] Circuit court U. S., southern district of N. Y. William Roemer *vs.* David Neumann & *al.* In equity. No. 2920. Notice of motion. Briesen and Steele, sol's for compl't, 229 B'way, New York. U. S. circuit court. Filed April 17, 1886. Timothy Griffith, clerk. Service admitted 4 Jan'y, 1885. W. C. Hauff, sol's for def't.

425 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN, GUSTAV BERNHEIM, and CARL NEUMAN. } In Equity. No. 2920.

Take notice that the annexed is a copy of the disclaimer we shall read to the court in support of our motion for a rehearing of the above-entitled cause, which motion now stands adjourned to January 29, 1886.

Yours truly, BRIESEN AND STEELE,
Solicitors for Compl't.

Dated New York, Jan. 20th, 1886.

To W. C. Haff, Esq., solicitor for defendants.

426 DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the disclaimer filed January 2nd, 1886, in the matter of the letters patent granted William Roemer, assignor to Roemer Brothers, October 1st, 1878, number 208,541, for improvement in locks for satchels.

In testimony whereof I, M. V. Montgomery, Commissioner of Patents, have caused the seal of the Patent Office to be affixed [L. S.] this 16th day of January, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

M. V. MONTGOMERY,
Commissioner.

427 To the Commissioner of Patents:

Your petitioner, William Roemer, a citizen of the United States, residing at Newark, in county of Essex and State of New Jersey, represents, in the matter of a certain improvement in locks for traveling bags for which letters patent of the United States, No. 208,541, were granted to your petitioner on the 1st day of October, 1878, he is the sole and exclusive owner of said letters patent, and that he has reason to believe (being so informed by an opinion just rendered by the Hon. William J. Wallace, circuit judge of the United States circuit court for the southern district of New York) that,

through inadvertence, the specification and claim of said letters patent are too broad, including that of which your petitioner was not the first inventor. Your petitioner, therefore, hereby disclaims in the 1st and 2nd claims in said specification any blocks, B, that have not the notches formed in them as shown in the drawing for holding the handle rings, as described in the specification.

Dated New York, 31st December, 1885.

WILLIAM ROEMER.

Witnesses:
GUSTAV SCHENPPI.
JAMES TURK.

E. 40, E. L. L., C. F.

428 [Endorsed:] No. 2920. Circuit court U. S., southern district of N. Y. William Roemer *vs.* David Neumann. In equity. Disclaimer and notice. Briesen and Steele, sol's for compl't, 229 Broadway, New York. U. S. circuit court. Filed April 17, 1886. Timothy Griffith, clerk. Service of within papers admitted this 20 Jan., '86. W. C. Haff, per M., def't's sol'r.

429 United States Circuit Court, Southern Dist. of New York.

ROEMER *v.* NEUMANN.

WALLACE, *J.*:

The defendant must file a formal petition for a rehearing before the questions sought to be presented by this motion can be entertained. It is proper to suggest upon the merits of the application that which as an original question it would seem that when a complainant seeks to obtain a rehearing, in order to get the benefit of a disclaimer entered at the Patent Office after the hearing, he should be required to file a supplemental bill, so that the defendant
430 can traverse the allegation that what is disclaimed was claimed through inadvertance, accident, or mistake, and take issue upon the fact whether there has been unreasonable delay in entering a disclaimer. The result of the adjudged cases is to the contrary, and it is now too late to re-examine the question upon principle. Such a disclaimer as has been entered in this case is sanctioned by the case of Schillinger *v.* Gunther, 17 Blatch., 66. The case of Hailes *v.* Albany Stove Co. is not analogous in its facts.

Endorsed: U. S. circuit court, southern district of N. Y. Roemer *v.* Neumann. Opinion. Wallace, J. U. S. circuit court. Filed Ap'l 17th, 1886. Timothy Griffith, clerk.

431 Circuit Court of the United States, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN and GUSTAV BERNHEIM, Impleaded, &c. } In Equity.

Take notice that on Saturday, the 24th day of April, 1886, at the opening of the court on that day, or as soon thereafter as counsel can be heard, we shall move, on the annexed petition, before one of the judges of this court, at the court-room thereof, in the general post-office building, New York city, for a rehearing of this suit, in accordance with the motion heretofore made, and the opinion filed by his honor Judge Wallace on April 17, 1886, which opinion we shall also read, together with the motion papers heretofore served, on such motion.

Yours, BRIESEN AND STEELE,
Sol's for Complainants.

Dated April 21st, 1886.

To W. C. Hauff, Esq., sol. for defendants.

432 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN and GUSTAV BERNHEIM, Impleaded with Another. } In Equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York, in the second circuit:

The petition of William Roemer respectfully shows—

1. That on or about the 13th day of November, 1883, your petitioner filed his bill of complaint in this honorable court against the above-named defendants, David Neuman and Gustav Bernheim, and one Carl Neumann, and afterwards, by leave of court, an amendment to said bill of complaint, wherein, amongst other things, your petitioner alleged the issue of letters patent of the United States, No. 208,541, to him on the 1st day of October, 1878, for certain new and *and* useful — in traveling bags; his exclusive ownership of said letters patent; the decision of the circuit court of the
433 United States for the district of New Jersey sustaining the validity of said letters patent at a hearing on the merits, on full pleadings, proofs, and arguments, in the suit of your petitioner against one Albert O. Headley; the infringement upon said letters patent by said defendants; the great and irreparable damage, loss, and injury thereby caused to your petitioner, and prayed for an injunction, both preliminary and perpetual, against said defendants, and a reference to ascertain the amount of the defendant's profits

and of your petitioner's damages, and such other relief as should be agreeable to equity, including your petitioner's costs in the premises.

2. That a *subpœna and respondendum* was issued out of and under the seal of this honorable court, directed to said David Neumann, Gustav Bernheim, and Carl Neumann, and was served upon said David Neumann and Gustav Bernheim.

3. That said defendants, David Neumann and Gustav Bernheim, caused their appearance to be entered, and thereafter filed their answer, wherein, amongst other things, they denied the validity of said letters patent and denied infringement.

434 4. That your petitioner filed a general replication to such answer.

5. That thereafter proofs were taken on the part of your petitioner and on the part of said defendants, which make up over 380 pages of printed matter.

6. That this suit was brought to a hearing on the merits before the Honorable William J. Wallace, circuit judge, and was argued orally, and written briefs were filed by counsel for the respective parties.

7. That his honor Judge Wallace, on the 31st day of December, 1885, filed his opinion in writing, wherein he decided that while there was no doubt that the defendants' lock was in all its essentials similar to the locks made by your petitioner and shown in the drawings of his patent, and no hesitation would be felt in pronouncing it an infringement if the claims of said patent were good, still your petitioner's said bill of complaint must be dismissed because the claims contained in his said letters patent were not good and valid claims, as the same are not limited to the lock complained of.

435 8. That therefore your petitioner, on the 31st day of December, 1885, made his certain disclaimer in writing, which he caused to be filed in the Patent Office of the United States on the 2nd day of January, 1886, all in accordance with the law in such case made and provided, wherein and whereby your petitioner sought to limit and confine the scope of the claims of his said letters patent, in conformity with said opinion, so that the same should fully cover the real invention of your petitioner; all of which will more fully and at large appear upon reference to a certified copy of said disclaimer here in court ready to be produced.

9. That thereupon and thereby said disclaimer became incorporated into and now is a part of said letters patent.

10. That no decree has yet been entered against your petitioner in this suit.

Wherefore your petitioner prays this honorable court that he may be permitted, in view of the premises aforesaid, to reopen his said case and to argue the same anew, in order to present his said letters patent and the said disclaimer to the consideration of this

436 honorable court, and that such other and further relief may be granted to your petitioner, the premises considered, as may be just and agreeable to equity.

And your petitioner will ever pray, etc.

WILLIAM ROEMER.

BRIESEN AND STEELE,
Solicitors for Compl't.
A. v. BRIESEN, *Of Counsel.*

437 UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, } *ss:*

William Roemer, being duly sworn, deposes and says—

That he is the complainant in the suit named in the foregoing petition subscribed by him; that he has read such petition, and that the same is true of his own knowledge.

WILLIAM ROEMER.

Subscribed and sworn to before me this 21st day of April, 1886.

CHARLES M. THOMAS,
Notary Public, Kings & N. Y. Cos.

438 [Endorsed:] Circuit court U. S., So. dist. of New York. William Roemer *vs.* David Neumann and Gustav Bernheim. In equity. Notice and petition. Briesen and Steele, sol's for compl't, 229 Broadway, New York. Filed in open court April 30, 1886. T. Service of a copy of the within papers is hereby admitted. 21st April, 1886. W. C. Hauff, sol. for def't. U. S. circuit court. Filed April 30, 1886. Timothy Griffith, clerk.

439 Circuit Court of the United States, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN and GUSTAVE BERNHEIM, Impleaded, etc.

The answer of the defendants, David Neumann and Gustave Bernheim, to the petition of William Roemer for a rehearing.

1. The said above-named defendants admit that the bill of complaint herein was filed, and subpœna issued, and appearance entered, and replication filed, and proofs taken, and suit brought to hearing, all as stated in paragraphs 1, 2, 3, 4, 5, and 6 of said petition for rehearing.

2. Defendants, further answering said petition, admit that on the 31st day of December, 1885, his honor Judge Wallace filed his opinion in writing, wherein he decided that the petitioner's bill of complaint must be dismissed because the claims contained in his said letters patent were not good and valid claims; but they allege that otherwise the purport and effect of said opinion are not correctly stated in the seventh paragraph of said petition for rehearing, as by reference to said opinion will more fully and at large appear.

440 3. And the defendants, answering the petition for rehearing, say that they have no knowledge or information, except such as is derived from statements of the petitioner and from being furnished with papers purporting to be copies of an alleged disclaimer entered by him, whether or not said petitioner has filed or assumed to file any disclaimer in the United States Patent Office, but they allege that if said petitioner has filed or assumed to file in the United States Patent Office any paper purporting to be a disclaimer, as alleged in said petition for rehearing, that then and in that event said alleged disclaimer was not duly or legally filed and is not a good or valid disclaimer in law; and said defendants allege that whether or not it be true that in and by said paper purporting to be a disclaimer the said petitioner has "sought to limit and confine the scope of his said letters patent," that he has not, in fact, limited or confined the same, and that the said disclaimer has no legal force or validity so to do.

4. And defendants, further answering said petition for rehearing, allege that the facts and circumstances in the matter of the letters patent granted to the complainant did not justify or authorize
441 him to make or file the alleged disclaimer alleged by him to have been made and filed; and the petitioners deny that through any inadvertance, accident, or mistake or without any fraudulent or deceptive intention the said patentee, William Roemer, claimed in and by said letters patent more than that of which he was the original or first inventor or discover-, but, on the contrary, allege that the said letters patent were intentionally made and obtained in the form in which the same were granted with knowledge on the part of said patentee of the matters and things or some of them which rendered the said claims invalid.

5. And defendants, further answering, say that if the said patentee ever had any right to enter any disclaimer he has lost the same by unreasonable neglect and delay so to do. And defendants pray that if the complainant be allowed to introduce said alleged disclaimer in evidence that they be allowed to file an amended or supplemental answer taking issue upon the validity and propriety of the same.

6. And defendants, further answering, say that there is no sufficient reason why this cause should be reopened or new proofs introduced or proof of said alleged disclaimer introduced, because the only form of lock made or sold by defendants which it is now alleged would be an infringement of said letters patent, as
442 modified by the paper purporting to be a disclaimer filed, were a form of lock the making and sale of which has been long discontinued to the knowledge of the complainant, and the manufacture and sale of which has never been recommended.

That the other forms of lock made and sold by the defendants, and which the defendants continued to make and sell after the commencement of this suit, are the forms of lock which this court decided, upon hearing herein, not to be infringements of said letters patent upon any construction thereof, and the same would not be an infringement upon said letters patent even if restricted to the form shown in the drawing thereof.

7. And the defendants, further answering the said petition, deny that the letters patent of the complainant, even if limited as alleged and claimed by the complainant by his alleged disclaimer, do not describe or claim any device or articles involving the exercise of invention for its production in view of the prior state of the art.

8. And the defendants, further answering said petition for a rehearing, allege that no case is made in or by said petition for rehearing for any rehearing or for any relief thereof.

443 Wherefore the defendants pray that said petition for a rehearing may be dismissed, with costs, and for such other and further relief as may be just.

GUSTAV BERNHEIM.

W. C. HAUFF, *Def'ts' Sol's.*
FREDERIC H. BETTS, *Of Counsel.*

CITY, COUNTY, AND SOUTHERN DISTRICT OF NEW YORK, *ss:*

Gustav Bernheim, being duly sworn, says that he is one of the defendants in the above-entitled action; that he has read the foregoing answer to the petition for rehearing; that the same is true to his own knowledge, except as to the matters thereof stated to be alleged on information and belief, and as to those matters he believes the same to be true.

GUSTAV BERNHEIM.

Sworn to before me this 28th day of April, 1886.
DANFORTH BECKER,
Notary Public (178), *N. Y. Co.*

444 [Endorsed:] U. S. circuit court, southern district of N. Y. Equity, 2920. Roemer *vs.* Neumann *et al.* Answer to petition for rehearing. F. H. Betts, W. C. Hauff, J. Van Santvoord, for def'ts. Filed in open court Ap'l 30, 1886. T.

445 U. S. Circuit Court, South. Dist. of New York.

ROEMER
v.
NEUMANN *et al.* } Equity, 2920.

Please take notice that the proposed order, a copy of which is hereto annexed and herewith served upon you, will be submitted to his honor Judge Wallace this afternoon at two o'clock, at the court-room of this court, in New York city, for settlement.

New York, April 30, 1886.

Yours, W. C. HAUFF,
Sol. for Def'ts.

To Messrs. Briesen & Steele, solicitors for complainant.

446 U. S. Circuit Court, South. Dist. of New York.

ROEMER *v.* NEUMANN *et al.*

This case coming on upon a petition for rehearing by the complainant and an answer thereto by the defendant, and after hearing Mr. A. v. Briesen for complainant, in support of said petition, and Mr. F. H. Betts, counsel for defendants, in opposition, and due consideration had—

It is ordered that the complainant's petition for rehearing be, and the same is hereby, granted upon the payment by the complainant to the defendant of all costs of this suit up to and including the time of filing the petition for rehearing.

447 It is further ordered that upon said petition and the answer thereto and upon such proofs as may be taken thereunder the cause be reheard.

It is further ordered that said costs be taxed by the clerk of this court and that the defendants have execution for said costs so taxed.

Ap'l 30, 1886.

W. J. WALLACE.

Hon. Judge Wallace:

I have seen no "answer" to my petition. Will you kindly permit me to settle this order to-morrow, as I am at present unable to leave the examination of a witness.

This notice was served upon me at 1.45 p. m.

Resp'y, A. v. BRIESEN.

(Endorsed:) U. S. cir. court, southern dis. of New York.

448 Roemer *v.* Neumann *et al.* Equity, 2920. Order granting rehearing & notice. Service of a notice of which the within notice is a copy, and of a copy of the proposed order thereto annexed, on us is hereby admitted. N. Y., Ap'l 30th, 1886. ——— ———, ——— ———, comp't's sol'rs. U. S. circuit court. Filed May 1st, 1886. Timothy Griffith, clerk.

449 Circuit Court of the United States, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN and GUSTAV BERNHEIM. } In Equity. No. 2920.

Take notice that we shall present the annexed final decree to one of the judges of this court, at the court-room thereof, in the post-office building, New York city, on Friday, June 4, 1886, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for settlement.

Yours, BRIESEN & STEELE,
Solicitors for Compl't.

New York, 2 June, 1886.

To W. C. Hauff, Esq., solicitor for def'ts.

450 Circuit Court of the United States, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN and GUSTAV BERNHEIM. } In Equity. No. 2920.

This cause having been heard on bill, amended bill, answer and replication, and proofs taken on the part of the complainant and on the part of the defendants, and a decision having been rendered in favor of the defendants to the effect that the complainant's bill be dismissed, and the complainant having thereafter filed his disclaimer in the Patent Office to certain parts of his letters patent in suit, and having moved, on petition, for a rehearing of this suit, and the defendants having answered such petition, and such rehearing having been granted by the court upon such petition, answer, and additional proofs to be taken thereunder by both parties upon the express condition that the defendants' costs up to the granting of such rehearing be first taxed by the clerk and paid by the complainant, and that an execution issue therefor, and such costs having been taxed at the sum of $637.42, and the complainant now stating in open court, through Arthur v. Briesen, Esq., his counsel, that he is not able to comply with the condition imposed upon him by the court, now, therefore, upon consideration thereof, it is hereby ordered, adjudged, and decreed that the said complainant's bill of complaint be, and the same hereby is, dismissed.

451

And it is further ordered, adjudged, and decreed that the complainant pay to the defendants their costs of this suit, taxed at $637.42, and that the defendants have execution therefor.

WM J. WALLACE.

Endorsed: No. 2920. Circuit court, So. dist. of New York. William Roemer *v.* David Neumann & *al.* In equity. Final decree. Briesen & Steele, sol. for comp't, 229 Broadway, New York. Service of a copy of the within papers is hereby admitted. 2d June, 1886. W. C. Hauff, sol. for def'ts. U. S. circuit court. Filed June 4, 1886. Timothy Griffith, clerk.

452

453 U. S. Circuit Court, Southern District of New York.

WILLIAM ROEMER, Complainant & Appellant,
v.
DAVID NEUMANN, GUSTAV BERNHEIM, Impleaded with CARL NEUMANN, Def'ts & Appellees. } In Equity.

We hereby consent that the foregoing papers shall constitute the record to be sent by the clerk of the circuit court of the United States for the southern district of New York to the U. S. Supreme Court on the appeal to said Supreme Court in the above-entitled cause, and that the exhibits be retained by the clerk of the said cir-

cuit court until the hearing of the appeal in said Supreme Court, when they are to be forwarded to said Supreme Court.

New York, Aug. 9th, 1886.

A. v. BRIESEN,
Of Counsel for Appellant.
W. C. HAUFF,
Of Counsel for Appellees.

454 (Endorsed:) U. S. circuit court. Filed Aug. 9th, 1886. Timothy Griffith, clerk.

455 Circuit Court of the United States for the Southern District of New York, Second Circuit.

WILLIAM ROEMER, Complainant & Appellant,
vs.
DAVID NEUMANN & GUSTAV BERNHEIM, Impleaded with CARL NEUMANN, Defendants & Appellees. } In Equity.

To the honorable the Supreme Court of the United States:

The appeal of William Roemer, complainant and appellant, above named, respectfully showeth that upon the 13th day of November, 1883, the above-named complainant filed his bill of complaint in the circuit court of the United States for the southern district
456 of New York, in the second circuit, against the above-named defendants, David Neumann, Gustav Bernheim, and Carl Neumann, in a suit in equity, alleging that said defendants had infringed the rights of the complainant therein as secured to him by letters patent granted on the 1st day of October, 1878, to him, and numbered 208,541, and praying for an accounting and payment to the complainant by the said defendants of the profits by them realized, and of the damages suffered by said William Roemer, complainant and appellant, by reason of said infringement of said letters patent, and also that the writs of subpœna and of injunction might be issued against said defendants, their clerks, agents, servants, and workmen, &c.

457 This complainant and appellant further showeth that pursuant to said prayer a *subpœna ad respondendum* issued out of and under the seal of said circuit court, and was duly served on said defendant, David Neumann.

This complainant and appellant further showeth that thereafter he filed his supplemental bill of complaint against the said defendants, wherein he alleged the judgment of the circuit court of the United States for the district of New Jersey, in the third circuit, sustaining the validity of his said letters patent in a suit there pending.

This complainant and appellant further showeth that thereafter said defendant, David Neumann, appeared and answered
458 said bill of complaint and said supplemental bill of complaint by filing his answer and amendment thereto, and, among other things, he therein denied the validity of said letters patent, and denied that he infringed the same; that general replications

were filed thereto, and issue being thus joined, testimony was taken; that while such testimony was being taken an *alias subpœna ad respondendum* was issued out of said court and under the seal thereof, and was duly served on said defendant, Gustav Bernheim, who thereupon appeared and stipulated and agreed, among other things, that the evidence and proceedings theretofore taken and the pleadings
459 filed on the part of said defendant, David Neumann, should stand as the evidence, proceedings, and pleadings of said defendant, Gustav Bernheim; that thereafter further testimony was taken and such proceedings were had that on the 31st day of December the said circuit court directed that a decree be entered dismissing said bill of complaint.

This complainant and appellant further showeth that thereafter he filed a disclaimer in the Patent Office to his letters patent in suit, and thereupon moved said circuit court on petition for a rehearing of said suit; that an answer to such petition was filed by said defendants, and said motion for a rehearing coming on to be
460 heard the same was granted and an order entered directing a rehearing to be had upon such petition and answer and proofs to be taken thereunder, upon the condition that the complainant pay to the defendants their costs in said suit up to the filing of such petition, the same to be taxed, and that the defendants have execution therefor; that thereafter said complainant appeared in open court, through his counsel, and declared that he could not comply with the condition of such order, whereupon such proceedings were had that, on the 4th day of June, 1886, a final decree was entered in said circuit court, wherein it was, in substance, adjudged and decreed that the said bill of complaint be dismissed with
461 costs to the defendants, David Neumann and Gustav Bernheim, taxed at $637.42, which said decree is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the decree of said circuit court, together with the bill of complaint, answer, replication, pleadings, depositions, evidence, and exhibits and proceedings in said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed with costs, and that complainant
462 may be given the relief prayed for in his bill of complaint or such other decree made as the Supreme Court shall deem just.

WM. ROEMER.

A. v. BRIESEN, *Of Counsel.*

Appeal allowed June 11th, 1886.

W. J. WALLACE.

(Endorsed:) Circuit court U. S., So. Dist. of New York. William Roemer, appellant, *v.* David Neumann and Gustav Bernheim, im-

pleaded, &c., appellees. In equity. Appeal. Briesen & Steele, sol's for compl't, 229 Broadway, New York. U. S. circuit court. Filed June 12, 1885. Timothy Griffith, clerk.

463 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

WILLIAM ROEMER, Complainant & Appellant,

vs.

DAVID NEUMANN and GUSTAV BERNHEIM, Impleaded with CARL NEUMANN, Defendants & Appellees.

Know all men by these presents that we, Henry Bitter, of No. 150 East 33d street, in the city of New York, county and State of New York, and George L. Rose, of No. 99 Reade street, in the city of New York, county and State of New York, are held and firmly bound unto the above-named David Neumann and Gustav Bernheim in the sum of thirteen hundred dollars, to be paid to the said David Neumann and Gustav Bernheim; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the ninth day of June, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas the above-named William Roemer has prosecuted an appeal to the Supreme Court of the United States to reverse the final decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above named William Roemer shall prosecute his appeal to effect and answer all damages and costs if he shall fail to make his plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY BITTER. [L. S.]
GEO. L. ROSE. [L. S.]

Sealed and delivered and taken and acknowledged this 9th day of June, 1886, before me—

[L. S.] TIMOTHY GRIFFITH,
Clerk U. S. Circuit Court, Southern Dist. of New York.

464 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

Henry Bitter and George L. Rose, being severally duly sworn, do depose and say, each for himself, that he is a freeholder within the city of New York, county & State of New York, and that he is worth

the sum of seventy-six hundred dollars over and above all his just debts and liabilities.

HENRY BITTER.
GEO. L. ROSE.

Sworn to this 9th day of June, A. D. 1886, before me—
[L. S.] TIMOTHY GRIFFITH,
Clerk U. S. Circuit Court, Southern Dist. of New York.

[Endorsed:] Vol. —, page —. U. S. circuit court, south. dist. of New York. William Roemer, co'pl't & app'l'nt, *vs.* David Neumann and Gustav Bernheim, impleaded, &c., d'f'ts & appellees. Bond for costs on appeal. —— ——, proctor. Filed this — day of ——, 18—. U. S. circuit court. Filed June 12th, 1886. Timothy Griffith, clerk.

I certify that I have made diligent enquiry as to the sufficiency of the within sureties and am satisfied that they are abundantly good for the amount of this bond.

TIMOTHY GRIFFITH, *Clerk.*

The within bond is approved.
Dated June 11th, 1886.

W. J. WALLACE.

465 Circuit Court of the United States for the Southern District of New York, Second Circuit.

WILLIAM ROEMER, Complainant & Appellant,
vs.
DAVID NEUMANN & GUSTAV BERNHEIM, Impleaded with CARL NEUMANN, Defendants & Appellees. } In Equity.

By the Honorable William J. Wallace, circuit judge in and for the circuit court of the United States for the southern district of New York, within the second circuit.

To David Neumann and Gustav Bernheim:

Whereas William Roemer has lately appealed to the Supreme Court of the United States from a decree entered in the cir-
466 cuit court of the United States for the southern district of New York, made in favor of you, the said David Neumann and Gustav Bernheim, and has filed the security required by law:

You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do in the matter of said appeal what may remain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 11th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

WM. J. WALLACE,
Circuit Judge.

467 (Endorsed:) Circuit court U. S., So. Dist. of New York. William Roemer, appellant, *vs.* David Neumann and Gustav Bernheim, impleaded, &c., appellees. In equity. Citation. Briesen & Steele, sol'rs for compl't, 229 Broadway, New York. Service of a copy of the within citation is hereby admitted 12th June, 1886. W. C. Hauff, sol'r for def'ts. U. S. circuit court. Filed June 12th, 1886. Timothy Griffith, clerk.

468 UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to four hundred and sixty-seven, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of William Roemer, complainant & appellant, against David Neumann and Gustav Bernheim, impleaded with Carl Neumann, defendants & appellees, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this tenth day of August, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 315. William Roemer, appellant, *vs.* David Neumann and Gustav Bernheim. Filed August 13, 1886.

Supreme Court U. S.
FILED.
OCT 4 1889
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 52.

WILLIAM ROEMER,
Appellant,

vs.

DAVID NEUMANN AND GUSTAV BERNHEIM.

Appeal from the Circuit Court of the United States for the Southern District of New York.

BRIEF IN BEHALF OF THE APPELLANT.

ARTHUR v. BRIESEN,
Of Counsel for Appellant.

NEW YORK:
EVENING POST JOB PRINTING OFFICE, 208 BROADWAY, COR. FULTON ST.
(Law Telephone 541.)

1889.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 52.

WILLIAM ROEMER,
Appellant,

vs.

DAVID NEUMANN and GUSTAV BERNHEIM.

Appeal from the Circuit Court of the United States for the Southern District of New York.

BRIEF IN BEHALF OF THE APPELLANT.

Statement of the Case.

The appellant, the complainant below, brought this suit under Letters Patent No. 208,541, of October 1, 1878, with the object of restraining the defendants and their firm of R. Neumann & Co. from infringing the said patent, and of recovering whatever damages had been caused by said infringement. The complainant's patent in suit is reproduced opposite page 94 of the record, immediately preceding which page the Court will find the file-wrapper of the patent, showing that the same was granted without objection on the part of the Patent Office and without amendment; the date of the application for said patent being March 26, 1878.

Description of patent.

The complainant's patent is for a lock for satchels. Briefly stated, it seeks to cover a lock-case having a sheet metal body or central portion bent from a plain piece of sheet metal into substantially ∩ form, combined with cast metal blocks that are applied to the open ends of said body to close the same. These cast metal blocks can be secured by screws or rivets upon the frame of the satchel, and then hold the entire lock, with its contents, in position. The blocks are represented as being hook-shaped at their ends, so that they may also serve to hold swiveled catches or handle-rings. The specification, speaking of these blocks, says:

" *B B* are pieces of cast metal or other suitable material, " constructed to fit into the open ends of the body *A*, into " which these blocks or plugs *B B* are inserted, as clearly " shown in Fig. 2."

The specification also says, respecting these blocks:

" The blocks *B* may also serve, if desired, to secure the " ends of the handle or the catches which close the bag, " and for other suitable purposes."

The blocks in question are in the patent shown adapted to hold the handle-rings or catches.

The claims are in words as follows:

" 1. In a lock-case, the combination of the body *A*, hav- " ing open ends, with the end pieces *B B*, that are applied " thereto, substantially as herein shown and described."

" 2. The end pieces, *B B*, of a lock-case, made with " shoulders *d*, for defining their position relative to the " body *A*, substantially as and for the purpose specified."

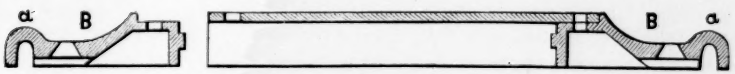
The infringing device.

The defendants' alleged infringing device is represented, among others, by the models marked " Complainant's Exhibit Infringing Lock " and " Complainant's Exhibit Neumann Lock," as to which the witnesses Oswald and Drake testify on pages 23 and 24 of the Record. Other infring-

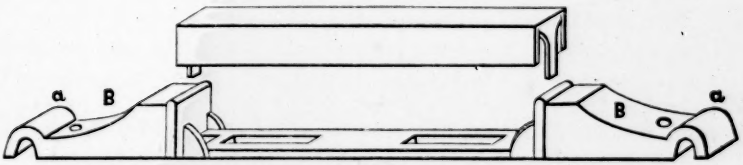
ing forms of the patent in suit are proven in the case; but for the purpose of this argument, we will confine ourselves to the "Complainant's Exhibit Neumann Lock" or its counterpart, "Complainant's Exhibit Infringing Lock."

The following sketches represent, respectively, complainant's patented lock, and the defendants' infringing lock:

ROEMER'S PATENTED DEVICE.



DEFENDANTS' INFRINGING DEVICE.



The only difference between the two locks is, that in the defendants' structure the blocks *B B* having the recesses *a* are united by a lower cast plate, which the complainant's structure does not contain.

Considerable testimony was taken by both sides, showing, on the one hand, that the complainant's patent covered this infringing lock, and, on the other hand, that the complainant's patent was not sufficiently defined in its claims to embrace therein clearly the structure made by the defendants.

Prior suit decided for complainant.

Before this suit was brought against these defendants, the complainant's patent had been sustained in a suit brought in the Circuit Court of the United States for the District of New Jersey, entitled Roemer *v.* Headley. The entire record in this Headley case is produced, and will be found between pages 64 and 87 of the record herein.

Judge Nixon's opinion, sustaining the patent, is printed on pages 85 and 86. The structure used by Headley was substantially identical with the structure here involved as infringing lock. The original exhibit of the Headley infringement is before the Court.

Opinion of Court below on final hearing.

After this present cause was submitted on the proofs to the Court below, his Honor Judge Wallace rendered his opinion, dismissing the complaint. This opinion will be found on pages 255 and 256 of the Record, and shows that, in the view of the Court, the infringing lock is in all its essentials similar to the complainant's lock, *and that no hesitation would be felt in pronouncing it an infringement, if the claims of the patent were good; but that the claims were not good, because they do not limit, in their reference to the end-pieces B B, said end pieces to the notches or recesses as an essential feature of the invention.*

Complainant's proofs as to notches in blocks.

The Court will find, from an inspection of the record, that throughout, the complainant had taken the position, that these notches in the end pieces were essential to his patent. Thus complainant's expert, Drake, in the *prima facie* proofs, describes the functions of the end blocks *B* of the patent (see Ans. 12, page 27) as including means for holding the handle-rings (see also Mr. Drake's answer to Q. 18 of his rebutting deposition, page 49 of the Record). Still, the Court below, instead of taking the liberal course of giving to the patent, by proper limitation, a construction which would have sustained it, and which would have brought the defendants' infringing structure within its scope, dismissed the complaint, on the ground that the patent did not point with sufficient definiteness to the notches in the end blocks—had therefore not made said notches a limiting feature of the patent, and for that reason was too broad, and consequently void.

Complainant's disclaimer.

This opinion was rendered, as the record shows (page 256), on the 31st December, 1885; and immediately upon its receipt, and on the same 31st day of December the complainant executed his disclaimer, which will be found on pages 257 and 258 of the Record, and is in words as follows:

"*To the Commissioner of Patents:*

"*Your petitioner, William Roemer, a citizen of the "United States, residing at Newark, in the County of "Essex, and State of New Jersey, represents: In the "matter of a certain improvement in locks for travel- "ing bags, for which Letters Patent of the United "States, No.* 208,541, *were granted to your pe- "titioner on the first day of October,* 1878, *he "is the sole and exclusive owner of said Letters "patent, and that he has reason to believe (being so in- "formed by an opinion just rendered by the Hon. William "J. Wallace, Circuit Judge of the United States Cir- "cuit Court for the Southern District of New York), that "through inadvertence the specification and claim of said "Letters Patent are too broad, including that of which "your petitioner was not the first inventor.* YOUR PETI- "TIONER, THEREFORE, HEREBY DISCLAIMS IN THE 1ST AND "2D CLAIMS IN SAID SPECIFICATION ANY BLOCKS *B* THAT "HAVE NOT THE NOTCHES FORMED IN THEM, AS SHOWN IN "THE DRAWING FOR HOLDING THE HANDLE-RINGS, AS DE- "SCRIBED IN THE SPECIFICATION.

"*Dated New York, 31st December,* 1885.

"WILLIAM ROEMER."

Motion for rehearing.

The intention of this disclaimer was to make the patent conform to the opinion of the Court. A motion was made for a rehearing in view of the disclaimer, and was denied (see Opinion, page 258), on the ground that a formal petition was requisite in such a case.

Petition for rehearing.

Order granting rehearing.

The formal petition was then filed (page 259), and an answer thereto, and thereupon an order was entered allowing the rehearing, on condition that the complainant shall first pay to the defendants all the costs of this suit up to and including the time of filing the petition for rehearing; on further condition that on the said petition and answer, and upon proofs to be thereafter taken thereunder, the cause be reheard. The order also required the costs to be taxed by the Clerk, and the defendants to have execution. Page 264 of the Record contains a copy of this order.

Costs were taxed at the sum of $637, and the complainant being unable to comply with the terms of the order of April 30, 1886, a final decree, dismissing the complaint, with costs as taxed, was entered.

Final decree.

This decree (printed on page 265 of Record) is in words as follows:

"*Circuit Court of the United States,*

"*Southern District of New York.*

"*William Roemer* vs. "*David Neumann and Gustav "Bernheim.*	*In Equity.—No. 2920.*

"*This cause having been heard on bill, amended bill, answer and replication, and proofs taken on the part of the complainant and on the part of the defendants, and a decision having been rendered in favor of the defendants to the effect that the complainant's bill be dismissed, and the complainant having thereafter filed his disclaimer in the Patent Office to certain parts of his Letters Patent in suit, and having moved, on petition, for a rehearing of this suit, and the defendants having answered such petition, and such rehearing having been granted by the Court upon such petition, answer, and additional proofs to be taken thereunder by both parties* UPON THE EXPRESS CONDITION THAT THE DEFENDANTS' COSTS UP TO THE GRANTING OF SUCH REHEARING BE FIRST TAXED BY THE CLERK AND PAID BY THE COMPLAINANT, *and that an execution issue therefor, and such costs having been taxed at the sum of $637.42, and the complainant now stating in open Court, through Arthur v. Briesen, Esq., his counsel, that he is not able to comply with the condition imposed upon him by the Court, now, therefore,*

upon consideration thereof, it is hereby ordered, adjudged and decreed, that the said complainant's bill of complaint, be and the same hereby is dismissed.

"*And it is further ordered, adjudged and decreed, that the complainant pay to the defendants their costs of this suit, taxed at $637.42, and that the defendants have execution therefor.*

"WM. J. WALLACE."

It will be observed that the decree takes cognizance of the complainant's disclaimer. In view of these facts we contend that the Court below erred in its decision, on the following specific grounds:

ASSIGNMENT OF ERRORS.

FIRST.—In that the Court below did not give to the complainant the benefit which the law allows on the filing of a disclaimer.

SECOND.—In that the Court below did not find (with or without the disclaimer) that the defendants' structure infringes upon the complainant's patent.

ARGUMENT.

DISCLAIMER.

The law provides (as this Court in Hailes *vs.* Albany Stove Co. (123 U. S., 582), has stated) by section 4917 for the filing of a disclaimer, and by section 4922 for the maintainment of a suit in cases where a disclaimer is filed without unreasonable delay.

The penalty prescribed by section 4922 in case of disclaimer filed after suit brought is, that the complainant shall not recover costs. No other or further penalty is by law imposed upon a successful complainant. The reason for this provision of the law undoubtedly is to save litigants the unnecessary expense of starting new litigation. In the present case, after the disclaimer was filed, the

plaintiff, to obtain the benefit thereof in this suit, is by law deprived of his costs; but is by law given the benefit of all the proofs already in the case, without further expense, so that he may submit his patent and his disclaimer in connection with the proofs already taken, to the Court for its judgment. The other course would be to abandon the present suit, pay the defendants costs, and start *de novo* with a new suit on the patent and disclaimer, in which new suit the complainant would not lose his costs, because of the filing of the disclaimer.

In the case at bar both penalties are imposed upon the complainant—the payment of defendants' costs by the Court, and the loss of his own costs by statute. Manifestly this double penalty was not intended by Congress to be applied in such cases. Nor was it within the discretion of the Court, in view of the act to impose it. If the disclaimer so shaped the complainant's patent as to entitle him to a decree, he is by law entitled to same without having to pay defendants' costs; but he loses his own.

If disclaimer had been filed before the hearing.

In the present case it seems that the disclaimer was framed to meet the objection specified in the Judge's opinion. *We cannot read the opinion without the conviction that, had the disclaimer been in the case prior to the rendition thereof, the infringement would have been found.* The opinion distinctly specifies that the defendants' structure infringes, and that the only difficulty lies with the complainant's patent in not plainly pointing to the notches as necessary elements of the matter claimed. In other words, had the claim pointed to these notches as necessary elements, then the decree would have been for the complainant. Such is our reading of the opinion. Had the disclaimer, therefore, been filed before the opinion was rendered, the opinion would have been for the complainant. The law, however, recognizes no difference as to the time when a disclaimer may be filed, so long as it is filed with reasonable diligence. In the case at bar the complainant had reason to believe his patent to be

Patent had been held valid.

valid and distinct in regard to this question of notches. His patent had been sustained upon this

construction before Judge Nixon in the Headley case. It was for the first time pointed out to the complainant in the opinion of Judge Wallace, rendered on the 31st December, 1885, that the patent was not sufficiently limited in respect to these notches, and on the same day the disclaimer was prepared and forwarded to Washington. The question of diligence, therefore, can hardly be raised; and we respectfully submit that this disclaimer should have received the unconditional consideration of the Court below—filed, as it was, after the opinion was rendered—the same as though it had been filed before the opinion had been rendered. There was no decree in the case until long after the disclaimer was filed. The proceedings in all respects were open; and yet this complainant was not to have the usual benefit of the disclaimer unless he first paid a large sum of money to the defendants. We believe that this was an error—a denial of justice to complainant—and is ground for a reversal of the decree.

Diligence in filing disclaimer.

A court of equity, sitting in patent cases, will, as a rule, give to a patent a construction which will enable it to remain valid. If that had been the course of the Court below, the language of Mr. Justice Blatchford, in Tuck *vs.* Bramhill (6 Blatchf., 95-103), would apply, where he says:

"*Under this provision of the ninth section, taken by itself, the plaintiff is entitled to recover in this case, without having entered any disclaimer.*"

And as this Court says in Smith *vs.* Nichols (21 Wallace, 117):

"*We see no reason for turning a party out of Court to renew the litigation after filing the disclaimer, thus subjecting both parties to the delay and expense which must necessarily follow, and without any benefit to either. We cannot believe such to have been the intention of Congress.*"

Yet, in the present case the complainant was practically

turned out of Court, by reason of his disclaimer, that is, he was put in a worse position, should he have wished to continue this litigation, than if he had started a new suit; for in a new suit he would have recovered his future costs from the defendant, while in the present suit he was to pay the defendants' costs, and lose his own past and future to boot.

That a disclaimer is filed in time if filed after the opinion of the Court, is established by many cases in which the courts pointed out that disclaimers *should* be filed, and made the filing of such disclaimers conditions precedent to the granting of decrees.

See Atwater *v.* Beecher, 8 Fed. Rep., 610.
Tyler *v.* Galloway, 20 Blatchf., 447.
Sessions *v.* Romadka, 21 Fed. Rep., 133.

Disclaimer proper in form.

The present disclaimer in itself is, we think, a proper disclaimer; it limits the matter covered to that shown and described in drawing and specification of patent, and is analogous to the disclaimer, which was sustained by this Court in Hurlbut *vs.* Schilinger, 130 U. S., 456, 463, and which disclaimer was in the following words:

"Your petitioner hereby disclaims the forming of blocks "from plastic material, without interposing anything be- "tween their joints while in the process of formation."

If the complainant is entitled to his decree on the merits without the disclaimer, and if Judge Wheeler is right in Sharp *v.* Tifft (18 Blatchf., 132, 137), in holding that where a disclaimer was not necessary to sustain the patent to the extent, it is held valid, and where its filing has had no effect in maintaining the suit, it does not come within the statute denying costs, and costs will be allowed to the complainant, then and in that case complainant would be entitled to his decree, without even the loss of costs.

With regard to the language in the patent as to the function of the blocks *B* for securing the ends of the handle or the catches which close the jaws of the bag, we submit *that the description of this function is a descrip-*

tion necessarily of a block capable of performing the function. The specification says: "The blocks may serve to secure the ends of the handle," etc. This means that a lock having these blocks is *capable* of thus holding the handles; it need not actually hold them; the patented lock will be there whether the handles are thus held or not; but the lock must be capable of holding them, so that it *may* hold them when desired. Thus we point to Complainant's Exhibit Infringing Lock and to Defendants' Exhibit Roemer's Lock; both these exhibits have the blocks adapted to hold the handle-rings; but they do not, as a matter of fact, hold them. Yet these very exhibits, as the Court will see, are made in accordance with the description of the patent, because they "may serve, if desired, to secure the ends of the handle." In other words, if the notches or hook-shaped ends were not on the blocks, then these blocks could not serve, if desired, to hold the handle or catches, and would, therefore, not be the blocks of the patent. Giving the patent that interpretation, which is the interpretation we contended for in the Court below, the disclaimer would have been totally unnecessary, provided the Court would have read the patent so that, if two readings are possible, it will give that reading which will sustain it.

Adair *v.* Thayer, 17 Blatchf., 468–470.
Waterbury Brass Co. *v.* N. Y. & Brooklyn Brass Co., 3 Fisher, 43–47.
Fitch v. *Bragg*, 8 *Fed. Rep.*, 588.
Turrill *v.* Railroad Co., 1 Wall., 491–510.
Ryan *v.* Goodwin, 3 Sumner C. C. R., 520.

Thus in the Turrill case this Honorable Court uses the following language (page 510, 1 Wall.):

"Patents for inventions are not to be treated as mere "monopolies, and therefore odious in the eyes of the law; "but they are to receive a liberal construction, and under "the fair application of the rule *ut res magis valeat, quam* "*pereat*, are, if practicable, to be so interpreted as to up- "hold and not to destroy the right of the inventor."

The Merits.

Utility.

The defendants' attack upon complainant's patent was first directed to the question of utility. They called two witnesses, Koch and Heller, to prove that complainant's locks are inconvenient, and that the same had to be abandoned, for the reason that it is easier, in their opinion, to put a lock made in a single piece—that is, all compact—on a frame. But in answer, we show that Heller himself admits using the infringing locks, and that many others have deemed it proper to infringe upon complainant's patent. Headley, who was sued in New Jersey; Kupper, Jenkinson, and many other large manufacturers of traveling bags, have dealt in the patented locks, and became afterwards infringers of complainant's patent (see pages 57 and 58 Record). The usefulness of the invention, for the purposes of the investigation before this Court, seems, therefore, established.

Jost and Kupper.

The next defense is that of anticipation by the witnesses Jost and Kupper. Kupper, it will be seen, was the principal witness against the complainant's patent in the Headley suit before Judge Nixon. His testimony given in *that* suit is reproduced on page 81 of the Record. Kupper was interested in the Headley case; he paid the costs in the Headley suit to the complainant (see Ans. 10, page 58, Record).

In the *present* suit Kupper seeks to prove anticipation in manner different from what was proved in the Headley case. For instance, Kupper had said in the Headley suit that Exhibit D^1 was made about a year after Exhibit D^2 was made (p. 81). In the present suit, he testifies that D^2 was sold in March, 1878, and made in 1877, and that D^1 was a lock made afterwards (Ans. 17 and 18, p. 114). Kupper testifies that Oscar Barnett made the casting for these locks. Jost swears that D^3 was made after D^1, and that D^3 was first made about September, 1878 (p. 105). Jost further says (Ans. 41, page 124), that he was informed by Kupper

that he did not make any locks at all like D^1 at the time referred to, namely, in 1878. Jost, it will be seen, is recalled (page 119) to corroborate Kupper's testimony on page 112, and to contradict Jost's testimony as given on page 105, after which Kupper is again called (page 138) to recontradict Jost.

Whatever may be true between these two gentlemen, it is clear that they failed to prove that they had made, used, or known any device corresponding with the invention of Mr. Roemer prior to the 25th day of March, 1878, the date of Roemer's oath to his application.

Oscar Barnett, for the complainant, testifies (he being the person mentioned by Kupper as the one who had made the castings) that he had examined his books with care, and that the first work done for Kupper in respect to locks was in January, 1878, and that Exhibit Jenkinson Lock, with certain modifications, represents the structure then produced, and neither D^3 nor D^1 were made by him, because, as the witness Barnett says, the exhibit he made was cast in one piece (see Ans. 5, page 32).

The next anticipating witness is Mr. Lieb. He produces the lock marked Lieb Lock C, which, though not the same as complainant's lock is similar thereto. Lieb's testimony as first given (page 116 of the Record), was erased by order of the Court (see page 224, Record) on the ground that his name had not been mentioned in the answer. By the same order the defendants were permitted to amend their answer and set up Lieb's prior knowledge. The amended answer will be found on page 18 of the Record, setting forth that John W. Lieb and others "had prior knowledge and made prior use of such "alleged invention, at said Cities of Newark and New "York and elsewhere, before the time of any supposed "invention thereof by said Roemer." Lieb.

Roemer's invention was first recorded, as we have seen, in March, 1878. Mr. Roemer's testimony is to the effect that he made the invention in 1876. Such was his testi-

mony in the Headley case (page 84), with which he is now confronted (see Ans. 2 and 3, page 57 of Record).

Lieb testifies that Exhibit C was made in September, 1877; also that he made one more like it; the other was sold; but never made any more, because he did not find them as practical as others (see Ans. 12, page 165). Supposing Lieb's statement to be true as to Exhibit C, and supposing the exhibit to be a substantial embodiment of Mr. Roemer's invention, then the record is that Roemer conceived his invention in 1876, made his model in January, 1878, applied for his patent in March, 1878, and kept up the manufacture of these locks on a large scale; whereas, Lieb made two models in September, 1877, and promptly abandoned the whole invention. Lieb is a member of the firm of Lagowitz & Co., and was himself present when his partner, Mr. Lagowitz, conferred with Mr. Roemer about this patent (see Ans. 59, p. 169, and Ans. 17 and 18, Roemer, pp. 58 and 59). Yet he never tells Mr. Lagowitz or Mr. Roemer that he has this Exhibit C in his possession; it might have rendered a license from the patentee needless. He is asked in Q. 61 why he did not tell his partner, Lagowitz, about it, and answers (see page 169):

"*I did not because I always made it my rule, whenever "I made anything new, not to show it to anybody else "until I found the same to be of practical use.*"

This was in 1882. When asked where he got hold of Exhibit C, he testifies that he knew of it at the time he made a certain affidavit in this case (page 168, Record), but didn't know it was still in existence. He afterwards, however, found it in a certain bag in the closet (Ans. 46, top of page 168), and at the time when he made affidavit respecting A and B he did not know about Exhibit C being in that bag. Still the same bag contained A and C both (Ans. 323 and 324, p. 194).

Mr. Drake, the complainant's expert witness, shows that Exhibit C, which Lieb claims to have had on a frame (Ans. 30, Lieb, page 166), could not have been on any frame, giving his reasons in answers 4 to 12, pages 44-46,

Record. As Lieb's testimony is not corroborated, this attack upon the genuineness of the exhibit is serious. There is, however, further testimony to discredit him. He mentions, in Ans. 92, page 172, two men, Heilman and Hanko, tool-makers, who helped him make these locks. Both these men are called by complainant (pages 36 and 39 of Record), and testify that a thing like Exhibit Lieb Lock C was not known to or remembered by them.

Another anticipating witness is Mr. Jenkinson. He claims to have bought the Exhibit Jenkinson Lock in February, 1878 (p. 130). This lock is not the complainant's invention, as appears by the defendants' own expert, Faber DuFaur (Ans. 34, page 216). Nor does Mr. Jenkinson fix the date of that lock—February, 1878—with sufficient certainty. He is asked how he fixes that date (Q. 29, page 132), and answers by an invoice, which, however, he does not produce. As to his own recollection of dates, his answers respecting the time he made a certain affidavit in this case (page 133, Record) are instructive. He says, in Ans. 74, page 135, that these locks like Exhibit Jenkinson Lock were recognized by numbers; in Ans. 75, that they were called long nickel lock, with handle-rings attached; and in Ans. 77, that they were called on the bills bag locks, with some number or figure. He afterwards produces a bill (see page 151), not receipted, dated February, 1878, for twelve dozen extra railroad locks. He claims that those were "similar" to Exhibit Jenkinson Lock. Upon this uncorroborated testimony we do not think Mr. Jenkinson should succeed in overthrowing complainant's patent.

Jenkinson.

The Bernheim lock, of which a model is before the Court, is admittedly an old contrivance, but does not contain, as we submit, the spirit of complainant's invention. It has not a plain lock-case whose ends are definitely closed by blocks that serve to fasten the case to the frame, and that also serve the additional purpose specified in the patent of holding handle rings or catches to close the bag.

Bernheim lock.

In the Bernheim lock, one end of the lock-case is a push button. This is a separate invention from that

shown in complainant's patent. It must be borne in mind that the Bernheim lock was originated or first imported by one of these defendants, Bernheim, who brought it here in 1875, but who is careful not to use the lock he so brought over from abroad, preferring to infringe upon complainant's patent. He is asked (Question 28, page 158) why he did not use locks like the Bernheim lock in places where he used locks like the infringing lock, and answers characteristically, "I don't know. We sometimes "make changes in locks."

Prior Patents.

Lieb Patent 1 and 2.

In addition to these witnesses, the defendants have produced sundry alleged anticipating patents: The Lieb patents, 1 and 2, of August, 1877. These do not show, it seems to us, complainant's invention; they don't show any lock. Defendants' expert, Faber DuFaur, in answer 38, p. 217, admits that these patents do not anticipate complainant's patent.

Bernheim patent and Schloss patent.

The next is Bernheim 1875 patent, which is like the Bernheim lock already referred to, and like the Schloss English patent, with a push button at the end of the lock-case.

Read patent.

The next anticipating patent is that of Read, 132,412, which also has a push button in the end of the lock. In defendants' expert's opinion (Ans. 6, p. 213) the Read patent does not show the Roemer invention.

Simon patent.

Then there is the patent of Simon, No. 177,020, of 1876. This patent shows a plate raised at *j* to form a loop for holding handle-rings, and on this plate the lock proper, *c*, is carried. But this lock proper *must be a complete lock throughout*, with finished ends. The parts having the recess or loop *j* do not assist in closing the ends of the lock proper. Defendants' expert, Mr. Faber DuFaur, is asked (Question 24, page 216) as follows:

"*Does Exhibit Simon Patent show that, which, in your*

"*opinion, is shown and described in the two claims of*
"*Complainant's Exhibit Patent?*"

And answered:

"*It does not show what, in my opinion, is shown and*
"*described in complainant's patent and referred to in the*
"*two claims of the same.*"

There are also two earlier patents of Mr. Roemer, No. 190,907, and 195,233. Both of these show the ends integral with the body of the lock. Neither of them shows that which is here sought to be patented. This is admitted by Mr. Faber DuFaur (Answers 25 and 26, page 216 of the Record). Roemer's patent.

The English Fisher Design Patents also fail to give any clue to the invention before the Court. This is admitted by Mr. Faber DuFaur, defendants' expert, in answers 7 and 8, page 213 of Record. Fisher designs.

There is no record evidence, therefore, nor oral testimony, to show an anticipation of that which, as we believe was Mr. Roemer's invention. The invention consisted of a lock-case, combined with cast-blocks, *which furnish the ends proper of the lock-case*, and which also furnish or are capable of being the means for fastening said case to the frame, and the means for holding handle-rings in their recesses. This invention has proven useful. It has done away with the necessity of striking out of sheet metal a complete lock-case with ends finished in proper workmanlike manner. The simple cast-blocks can perform the treble function of closing the ends of the lock-case, holding the lock-case to the frame, and holding the rings of the handle.

We believe that this invention being meritorious, is entitled to favorable consideration. We have shown that it has been largely infringed; that the Court below recognized in the patent, as a substantial feature of novelty, the characteristics hereinabove pointed out; but that under a rigid interpretation it found the patent to fail to

specify in the claims that which Mr. Roemer has clearly and admittedly invented. Yet, what he had invented is fairly represented and described in the patent, and is fully brought out by the disclaimer. We therefore submit that the decree below as rendered was erroneous in all respects, and pray that it be reversed.

Respectfully submitted,

ARTHUR v. BRIESEN,
for Appellant.

NEW YORK, September 27, 1889.

Supreme Court of the United States.

OCTOBER TERM, 1889.

WILLIAM ROEMER, Appellant, vs. DAVID NEUMANN and GUSTAV BERNHEIM, Appellees.	No. 52.

BRIEF FOR APPELLEES.

Statement.

The bill in this case was filed November 13th, 1883, and charged infringement of the Letters Patent to William Roemer, dated October 1st, 1878, No. 208,541 (Record, pp. 2, 6).

A Supplemental Bill, alleging a decision in favor of the patent in New Jersey, was filed in January, 1884 (pp. 7, 8).

The defendant Neumann alone was served with process or appeared (p. 8).

Neumann answered denying the novelty of the invention, and citing a large number of prior patents, publications and anticipating witnesses, and also denying infringement.

The answer further alleged that the specification of the patent was misleading and ambiguous, and that the alleged improvement did not require the exercise of invention for its construction, but was such as would readily be suggested to a mechanic of ordinary skill (pp. 9, 15).

Replication was filed March 7th, 1884 (p. 16), and an amended answer May 19th, 1884 (pp. 17, 18).

Proofs were taken by both parties, and the cause came on for hearing before His Honor Judge WALLACE on December 10th, 1885 (p. 254, fols. 416, 417).

On December 31st, 1885, Judge WALLACE rendered an opinion dismissing the Bill (pp. 255, 256).

Before a decree was entered, the complainant made a motion for a rehearing on the ground that he had, *subsequent to the filing of the opinion*, filed a disclaimer to certain parts of both claims of the patent (pp. 256, 258).

A copy of the alleged disclaimer was served with the motion papers (p. 257).

The Court denied the motion on the ground that "a formal petition" must be first filed to entitle the matter to consideration (p. 258, fols. 429, 430).

Complainant then filed a petition for rehearing, alleging substantially the same matter (pp. 259, 260), and an answer thereto having been filed (pp. 261, 263), a hearing was had upon said petition and the Court made an order (p. 264, fol. 446), that the petition be granted on payment by the complainant to the defendant of all the costs of the suit up to and including the time of filing the petition, and that the cause be reheard "*upon such proofs as may be taken*" (fol. 447).

The complainant failed to comply with the order, failed to pay the costs taxed, failed to take any evidence in support of the petition, and neglected to have the case reheard either upon the alleged disclaimer or other evidence.

Thereupon the bill was dismissed, with costs (p. 265).

An appeal was taken from said decree to this Court (p. 266).

There are only two assignments of error:

1. That the Court below did not give the complainant the benefit of a disclaimer.

2. That the Court did not find that the defendants' structure infringed.

POINTS ON BEHALF OF APPELLEES.

First Point.

The Construction of Complainant's Patent.

The complainant's patent on its face purports to be no more than an improvement upon the prior state of the art, for, in the specification of said patent, the complainant states that "this invention relates to certain "improvements in the construction of lock-cases of "the kind described in Letters Patent Nos. 190,907 "and 195,233, which were granted to me May 15th, "1877, and Sepptember 18th, 1877, respectively."

The supposed nature and object of the alleged invention are set forth in said specification in the following words:

"The principal object of the invention is to reduce "the expense of the lock-case, and to render the same "more practical in form and construction."

"The invention consists, principally, in forming the "body of the lock-case with open ends, and in com- "bining the same with cast blocks or end pieces, which

" are separately made, all as hereinafter more fully de-
" scribed."

* * * * * * *

The letter *A* in the drawing represents the body or central portion of the lock-case ; the same is made of *sheet metal or other suitable material*, and bent into a U form, substantially as indicated in figure 3, so as to form the top *a* and the sides *b b* of the lock-case.

" The bottom of the lock-case is *open*, and the ends
" of the portion A *are also open*."

" B B are pieces of cast metal *or other sutiable ma-*
" *terial*, constructed to fit into the open ends of the
" body A, into which these blocks or plugs B B are in-
" serted, as clearly shown in Fig. 2. Each block B
" should have a shoulder, *d*, to limit the degree of its
" insertion into the shell A, *or of the insertion of the*
" *shell into the block*."

The claims are :

" 1. In a lock-case, the combination of the body A,
" *having open ends*, with the end pieces, B B, *that are*
" *applied thereto*, substantially as herein shown and de-
" scribed."

" 2. The end pieces B B, of a lock-case, made with
" shoulders, *d, for defining their position relative to the*
" *body A*, substantially as and for the purpose speci-
" fied."

The words to which particular attention is called in the above quotations have been italicized.

The objects of the alleged invention in locks for satchels, as appears from the above, are to reduce the expense of the lock-case, and to render the same more practical in form and construction.

These objects the patentee claims are attained by forming the body of the lock-case of a simple piece of sheet metal bent into a single and simple curve or U shape, leaving the bottom open and with open ends, and combining the lock-case with blocks or end pieces of cast metal " *or other suitable material*," which are separately made.

It is to be observed that it is no part of the invention that the "end pieces B B" should be adapted to hold handle rings or catches; this is only an *optional* feature, not made a part of the claim, and cannot be referred to to support any claim of invention.

Sewell vs. Jones, 91 U. S., 171.

Nor is it a part of the invention that the end pieces should be made of *cast* metal.

Second Point.

The appellant is not entitled to any benefit by reason of the fact that he alleged in his petition for rehearing that he has filed a disclaimer, because:

(1) He never introduced said disclaimer in evidence, and declined to avail himself of the permission of the Court which allowed him to do so.

He simply annexed an alleged copy of such a disclaimer to his moving papers upon the original motion for *leave* to put it in evidence, and the Court having upon a subsequent hearing, on petition, granted permission he *declined to avail himself of it.*

(2) No proof was offered or introduced that the matter alleged to have been disclaimed was introduced by inadvertence, accident or mistake, nor that there had not been unreasonable delay in filing such a disclaimer.

If the complainant had availed himself of the permission of the Court to introduce it those issues would then have been open to both parties.

(3) The statute (R. S., Sec. 4917) is specific that "no such disclaimer shall affect any action pending at "the time of its being filed, except so far as may relate

" to the question of unreasonable neglect or delay in " filing."

In other words, the filing of a disclaimer, pending a suit, cannot in any way benefit the complainant, except in the way of possible relief from the charge of unreasonable neglect, if such a question should be raised.

(4) The brief of the appellant shows a misapprehension of the true position of the complaint with reference to the disclaimer.

The Court imposed no penalty.

While it is true that under the statute (R. S., § 4922) a patentee can recover upon a separable portion of the invention claimed in his patent, even without filing a disclaimer, provided that he has not unreasonably neglected or delayed to file such disclaimer, yet the practice *in equity* is well settled that it is not proper to enter a decree in favor of a patentee based on a portion of the invention claimed by him until he has given satisfactory proof that he has filed a proper disclaimer.

Myers vs. Frame, 8 Blatch., 446.
Burdet vs. Estey, 15 Blatch., 349.
Christian vs. Rumsey, 17 *Id.*, 148.
Aiken vs. Dolan, 3 Fish., 207.
Yale Co. vs. Scovil Co., 18 Blatch., 248.
Gage vs. Herring, 107 U. S., 646.

In the present case the Court on a preliminary motion made by the complainant for *leave* to introduce proof in regard to a disclaimer and intimated that this disclaimer was proper in form, and granted the prayer of a petition to reopen the proofs *so as to allow* the complainant to prove his alleged disclaimer, and *gave leave* to prove that he was in a position to file it, *i. e.*, that the original claim was made by inadvertence, accident or mistake, and that he had been guilty of no unreasonable delay, and so as *to allow the defendants to contest those questions.*

This was a pure matter of judicial discretion and the terms of granting the favor were so also.

Having obtained this permission upon terms (the payment of costs), the complainant then *declined* to avail himself of it, and hence left the Court with no alternative except to enter a decree as if there had been no disclaimer alleged in the case.

Nor does it appear that any other decree was asked for.

The fact that the Court dismissed the bill even after the alleged disclaimer had been called to its attention conclusively shows that it was of opinion, that, as the case then stood, and without further evidence, the complainant was not entitled to a decree even on the matter left in. Permission to reopen the case was simply intended to give the complainant the option of *another chance*. He declined this.

This Court cannot be asked to reverse a decree made under such circumstances, nor to give the defendant the benefit of any presumption which might arise from a disclaimer.

The patent must, therefore, be considered in the form and shape in which it was granted, and it is obvious from the above examination that the thing which the patentee claimed in his first claim is a lockcase having a body formed of a simple U-shaped piece of metal, having *open bottom and ends*, such ends being covered by end-pieces "of cast metal *or other suitable* material."

The second claim is for end-pieces of lockcases, made with shoulders for defining the extent of the overlapping of the U-shaped body *A* over or under them.

Even if the claim had been limited, as was attempted to be done by the alleged disclaimer, to a lockcase of the kind described having end-pieces with *notches* for handle rings in them, it would add nothing to the force or validity of the patent, as we shall see more fully hereafter, and as must have been the opinion of the Court below.

If all the other conditions of the patent had been fulfilled by prior structures, the mere putting of notches in the end-pieces to hold handle rings would be a matter of the simplest mechanical manipulation, not involving "invention."

Notches for handle rings for bags had been previously provided in all sorts of end-pieces or attachments for bag locks, and the mere putting of such notches in the particular end-pieces, and in connection with the particular U-shaped body provided, could not possibly require anything more than mere mechanical skill.

Indeed the presence or absence of the notches in the end-pieces would be entirely immaterial to the functions of the other parts of the structure.

If they were present they would form with the lock case a mere "aggregation" as distinguished from a patentable combination.

Having now defined the alleged invention, the previous state of the art will be discussed to show that the complainant's patent had been anticipated.

The prior state of the art is shown by prior patents and also by prior use.

Third Point.

The complainant's patent was void for want of novelty in view of the prior state of the art, as exhibited by the prior patents and proof of prior use.

The Court below clearly adjudged this, and there is no assignment that this was error.

For completeness we shall, however, consider this question.

PRIOR PATENTS.

In 1856, English Letters Patent No, 176 were granted to Joseph Schloss for piston-bolt for traveling bags, etc., said patent having been introduced in evidence by defendants.

In figure 8 of the drawing of this patent (Record, p. 242) is shown a device which is substantially embodied in Defendant's Exhibit Schloss Lock, and which device is a lock for a satchel, the body of which lock has open ends, and has end-pieces inserted into such openings. One of said end-pieces is fixed by a pin or bolt which fixes the degree of insertion into the body or shell of said end-piece. The other end-piece is free to slide back and forth a limited distance to operate the latch, but a suitable shoulder limits the insertion of said piston into the shell to a proper degree.

In United States Letters Patent No. 136,629 (Defendant's Exhibit Bernheim Patent of 1875, p. 234), granted May 26th, 1875, to Bernheim, one of the abovenamed appellees, is shown and described a U-shaped lock-case with open ends, one of which is closed by a fixed and the other by a movable end-piece. The end pieces overlap the case.

In Defendant's Exhibit Simon Patent No. 177,020, granted May 2d, 1876 (p. 246), is shown a lock having an extended lock plate, having creases which may "serve, if desired, to secure the ends of the handle or "the catches which close the jaws of the bag," which functions are incidentally ascribed to the blocks or end-pieces in appellant's patent in suit.

In the United States Patents Nos. 190,907 and 195,-233, both of 1877, and which are referred to in the patent No. 208,541, here sued on, as also in the Defendants' Exhibit Fisher Designs, No. 293,557, of August 14th, 1875, and No. 298,207, of February 5th, 1876, are shown lock cases of the general construction of the lock case of complainant's patent here sued on,

that is U-shaped in cross-section, and provided with creases or loops, which may " serve, if desired, to se- " cure the ends of the handle or the catches which close " the jaws of the bag." In said United States Patents Nos. 190,907 and 195,233, and in said designs, said creases or loops are formed on the case, and not as in complainant's patent here in suit, upon separate end pieces.

Prior Use.

Bernheim Structure.

Ever since the Defendants' Exhibit Bernheim 1875 patent was granted, on May 25th, 1875, locks for satchels, the construction of which is shown by Defendants' Exhibits Bernheim Model and Bernheim Certified Model, have been made and sold in quantities, the sales thereof beginning in the summer of 1875.

Record, pp. 154, 155, A's 1 to 7, both inclusive, and pp. 156 and 157, A. 15.

The structure, Bernheim Certified Model, as appears by the certificate of the United States Patent Office thereto annexed, is a duplicate of the model filed in the matter of said Defendants' Exhibit Bernheim 1875 Patent No. 163,629.

Record, p. 254.

The said structures, Bernheim Model and Bernheim Certified Model, are in appearance similar to the structure shown in the drawing of said Bernheim 1875 patent, and both said Bernheim Model and Bernheim Certified Model have U-shaped lock cases with open ends, and end pieces into which the U-shaped case or shell is in each instance inserted.

Said end pieces have *shoulders* or means for *limiting* the degree of " the insertion of the shell into the block " or end pieces.

The structures Bernheim Model and Bernheim Certified Model, thus clearly show the features claimed in all the claims of appellant's patent here in suit.

It is true that the end pieces or blocks in Bernheim Model and in Bernheim Certified Model are not provided with means for securing the ends of the handle or catches which close the jaws of a bag, but as these functions are mentioned merely incidentally in complainant's patent in suit, and as optional ones only, in connection with the end pieces, and as the claims of complainant's patent in suit make no mention of said incidental functions of said end pieces, it is immaterial to this case that the end pieces in Bernheim Model and in Bernheim Certified Model are not adapted to serve for such incidental purposes.

It is also true that *one* end piece in Bernheim Model, as also in Bernheim Certified Model, is adapted to operate the locking bolt of the device, and for this purpose said end piece slides back and forth. But said end piece, in each case, still serves to close one end of the lock case or shell, and has a shoulder or means for limiting the degree of the insertion of the shell into the block.

Complainant's expert, Mr. Drake, admits that Bernheim Model and Bernheim Certified Model show lock cases having open ends, which open ends are covered by caps (Record, pp. 53, 54, AA. 22, 24).

And even if it should be successfully contended that the movable end piece of the Bernheim lock is not the equivalent of *one* of the end pieces of the Roemer patent, still, it is clear that the single *fixed end piece* of the Bernheim lock is the equivalent of either one of the fixed end pieces of the Roemer patent, and thus it is clear that all that Roemer did was to duplicate the fixed end piece of Bernheim, and as there is no co-operation between the end pieces, but each performs its separate function of closing its own end of the case un-

modified in use or action by the presence or absence of the other, such duplication is not patentable.

Dunbar vs. Myers, 94 U. S., 187.

Nor can any distinction be relied upon, based upon the fact that in the drawings of the Roemer patent the end pieces and the U-shaped shell are fastened to the bag frame by a single bolt or pin at each end passing through both; for in the first place there could be no invention in fastening two pieces of overlapping metal to a third piece by one pin. This is the commonest of of all expedients to save labor and work. Nor is this construction made an essential of the Roemer claim, for no mention of this mode of fastening is made in the claims, and the specification, while it describes, it adds: "But the plugs or end pieces BB may also be secured "by additional or separate bolts, if desired, and so may "also the shell A."

Nor can the Bernheim structures be considered substantially different from Roemer's on the ground that Roemer's end pieces are provided with notches or creases which may be utilized for holding handle rings or catches for fastening the jaws of the bag.

The presence or absence of such notches in the end pieces adds nothing to them *in a patentable sense.* If present they do not modify the action of the other parts and hence are a mere aggregation. Numerous prior locks had possessed them in slighlty different locations, and it was clearly within the knowledge of any mechanic to supply them to this particular lock.

Lieb Structures.

The Defendants' Exhibit Lieb Lock C, as defendants' expert, Faber du Faur, states (R., p. 210) has handles secured upon end pieces, which end pieces are inserted into the U-shaped ends of the lock case, and which

end pieces are provided with shoulders, which define their position relative to the body of the lock case.

The complainant, in no part of the evidence on his behalf, disputes that the structure, Defendants' Exhibit Lieb Lock C, meets the claims of complainants' patent here in suit, and a mere inspection of said Lieb lock C demonstrates that such is the case.

With regard to said Lieb lock C, and the evidence connected therewith, complainant merely seeks to discredit the same, and to throw suspicion upon the testimony of John W. Lieb, which testimony shows the identical device, Defendants' Exhibit Lieb Lock C, with another one like it, to have been made in September, 1877.

R., pp. 116, 117, AA. 1, 2, 3 and 9.

The witness John W. Lieb, who made the device Lieb lock C, and the said other device like Lieb lock C, was in the habit of experimenting in regard to locks and lock cases during the period from August, 1876, to 1879, and subsequently, as appears from the evidence of *complainant's* witness Heilman.

R., pp. 39, 40, introduction to testimony and AA. 1, 8, 9.

With regard to the dates in 1877, when Lieb made Lieb lock C, and another lock like said exhibit, and the date of the sale of said lock like Exhibit C, the witness Lieb is able to fix the same in several ways. Lieb testifies as follows :

R., 118 :

" 19 Q. When did you first get the idea of mak-
" ing a device like Defendants' Exhibit Lieb
Lock C ?

" Objected to as immaterial.

" A. It was about the time I obtained the pat-
" ents, or about the date of the patents (I refer
" to Lieb 1877 patents Nos. 1 and 2).

"20 Q. How are you able to fix the date as dur-
" ing September, 1877, that you made Defend-
" ants' Exhibit Lieb Lock C and another device
" like it of the same kind?

"A. Because my recollections are that they
" were made shortly after the date of the two said
" patents."

The Lieb 1877 patents Nos. 1 and 2 are both in evidence, and both were granted on August 28th, 1877.

The Lieb Lock C was made from structures like Defendants' Exhibits Lieb Lock B and Experiment No. 1, and castings like Experiment No. 1 were furnished to the firm of J. Kagowitz & Co., in which firm Lieb is in part interested, on or about Sept. 24th, 1877.

This is shown by *Complainant's* Exhibit Lieb Book.

R., p. 169, Lieb's cross-examination:

"62 x-Q. How was the lock case of Exhibit Lieb
" Lock C made; I mean by stamping or by cast-
" ing?

"A. By casting.

"63 x-Q. Was it made in an ordinary mold, or
" was the mold specially prepared for it?

"A. It was made in the same mold, or by the
" same mold as Exhibit Lieb Lock B, and was cut
" off and formed into the shape of Exhibit Lieb
" Lock C, and the handle fastenings belonging to
" the same exhibit were cut off from another lock,
" which was also like Exhibit Lieb Lock B.

"64 x-Q. How do you know that the lock case
" of Exhibit Lieb Lock C was cast in the same
" mold in which the lock case of Exhibit Lieb
" Lock B was cast?

"A. Because I took a lock case intended for a
" lock like Lieb Lock B and formed the Lieb Lock
" C from it.

"65 x-Q. You are quite sure of that, are you
" not?
"A. Let me look at the exhibit.
"66 x-Q. I prefer to have you state your recol-
" lection of what you really did, without your
" looking at the exhibit.
"A. I think I did, as much as I recollect."

Lieb's re-direct, R., p. 181:

"198 Re-d. Q. In answer to cross-question 193
" you stated that as you compare Exhibit Lieb
" Lock C with Exhibit Lieb Experiment 1 and
" with Exhibit Lieb Lock B, you are not certain
" that the lock case of Exhibit Lieb Lock C came
" from a casting like that in Exhibit Lieb Lock B.
" Please now examine said Exhibits Lieb Locks C
" and B, and Exhibit Experiment 1, and state
" your knowledge on that subject?
" Objected to as already answered to cross-ques-
" tion 193, and as incompetent, if seeking a con-
" tradiction of that answer.
" A. I am convinced by having looked at the
" books which contain bills of Ballard & Minchin,
" and find that they have furnished J. Lagowitz &
" Co. with locks of malleable iron on September
" 24th, 1877, and the Exhibit Lieb Lock C, that is
" the lock case separate, is made of malleable iron
" and the end pieces were made of grey iron, and
" the lock case Exhibit C, resembling the Experi-
" ment No. 1, and being of the same material, I
" can surely tell that lock case of Exhibit Lieb
" Lock C is constructed from the same pattern as
" Experiment No. 1.

Lieb's re-cross, R., pp. 185, 186:

" 225 Re-x-Q. Well, answer this vuestion again.
" Was or was not a bag having thereon a lock like
" Exhibit Lieb Lock C sold to your knowledge by

" J. Lagowitz & Co. in the month of December,
" 1877 ?

" A. It was not, according to my knowledge and belief.

" 226 Re-x-Q. Was there such a bag and such a
" lock thereon sold by J. Lagowitz & Co. in No-
" vember, 1877 ?

" A. It might have been sold in November,
" 1877, or October, 1877.

" 227 Re-x-Q. Is that the best answer as to that
" alleged fact which you can make ?

" A. No; I say it must have been sold during
" the time of those two months mentioned.

" 228 Re-x-Q. Then it was not sold in Septem-
" ber, 1877, was it ?

" A. I don't think it was sold during September,
" 1877.

" 229 Re-x-Q. But you know it was made in
" September, 1877, do you not ?

" A. It was made, according to my knowledge,
" during the last week of September, 1877.

" 230 Re-x-Q. You mean between the 23d and
" the 30th days of September, 1877 ; is that it ?

" A. I don't mean between the 23d of September,
" 1877, because I did not have the castings on
" that day from which the lock was made, which
" castings we received according to the bill from
" Ballard & Minchin on the 24th of September,
" 1877.

" 231 Re-x Q. Where is that bill ?

" A. The bill I inquired for at our store, where
" the bills are kept, and on search for it requested
" by me, was told that it could not be found, but
" I have found a record of it in a bill book of ours,
" which I now produce for inspection, and which
" on page marked 224 contained the following
" entry : ' September 24, 1877, Ballard & Minchin,

" '16 pieces of malleable lock frames, 64 cents.'
" Said book is handed to complainant's counsel
" and inspected by him, and offered in evidence
" by him, and he asks the officer to mark it as an
" exhibit in the cause.

" Defendant's counsel states that he has no ob-
" jection to the witness offering said book in evi-
" dence, provided the witness has the authority to
" leave said book here in Court.

" The Examiner marks the book Compts. Exh.
" Lieb Book, Aug. 11, 1884, J. A. S., Exr., and
" and allows the exhibit to go in the custody of
" the witness, the said exhibit to be produced be-
" fore said Examiner when called for.

" 232 Re-x-Q. Is that entry of September 24,
" 1877, the first entry you find of malleable lock
" frames obtained from Ballard & Minchin?

" A. It is of malleable lock frames; there is
" previous dates of bills of grey iron locks.

" 233 Re-x-Q. By grey iron locks I suppose you
" mean locks like Exhibit Lieb Lock B?

" A. I do.

Lieb's re-cross, R., p 187:

" 251 Re-x-Q. You refer to an entry in the book
" marked Lieb's book. In whose handwriting is
" that entry?

" A. I think it is the handwriting of Mr. Alex-
" ander Frankel, who is still in the employ of J.
" Lagowitz & Co.

" 252 Re-x-Q. Is that entry on one of the origi-
" nal pages of the book?

" A. Yes, it is.

" 253 Re-x-Q. What do you understand by
" original pages in the last question?

" A. I understand it to be the pages which be-
" long to the other part of the book.

" 254 Re-x-Q. Are the original pages of that " book numbered?

" A. The original pages, that is a part of the " book, has its pages or the number of its pages " printed, and at the end of those printed pages at " the continuance there are pencil marks of pages " which were made by myself on last Saturday in " connection with an index for bills of Ballard & " Minchin, which index was made by me in pencil " marks for convenience of looking up items of " bills of said Ballard & Minchin when needed.

" 225 Re-x-Q. Is the entry of September 24, " 1877, on one of the pages of the book which " bears the printed numbers?

" A. It is not.

" 256 Re-x-Q. Is the page which bears that " entry of the same size and character of paper of " any other page in the book which precedes it?

" A. It is not.

(Lieb's re-direct, R., p. 198):

" 349 Re-re-d. Q. In your answers to cross- " questions 255 and 256 you state that the entry " of September 24, 1877, is not on one of the pages " of the book which bears the printed numbers, " and that the page which bears that entry is not " of the same size and character of paper of any " other page in the book which precedes it; please " explain how it is that said entry is not on one of " said pages bearing printed numbers, but upon a " different kind of page, as stated?

" A. When I first found the book I asked Mr. " Alexander Frankle, who entered most of the " items in it, how the pages, which seemed to be " annexed to the pages which have printed num- " bers on, came to be in the book; he answered " me that he wanted to complete the entries for

" the month of September in said book, and there-
" fore he annexed the same into it.

Answer objected to as hearsay.

The article Lieb Experiment 1, together with Lieb Experiment 2, are both in evidence and were made between the first part of April, 1877, and July, 1877.
(R., p. 156).

Regarding the lock like Lieb Lock C, which was sold in October or November, 1877, the witness Lieb is cross-examined very minutely.

(R., pp. 166, 167) :

" 21 x-Q. Did you sell that other lock which
" you say was like Exhibit Lieb Lock C ?
" A. It was sold by J. Lagowitz & Co.
" 22 x-Q. Did you sell it personally ?
" A. I did not sell it personally.
" 23 x-Q. Were you present when it was sold ?
" A. I was not present when it was sold, but I
" recollect that it was put in stock with bags con-
" taining or having the locks on of the other
" devices as Lieb Lock A and B, which stock was
" entirely sold during the time or after two months
" after the locks were made and put on bags.
" All after and including the words, 'but I
" recollect,' objected to as not responsive.
" 24 x-Q. Who sold it ?
" A. It was sold by J. Lagowitz & Co.
" 25 x-Q. I wish to know the name of the per-
" son who sold it ?
" A. I cannot tell the name of the person who
" sold it, because orders were coming in from dif-
" ferent parties to whom samples were sent like Lieb
" Lock A and B, and Lieb Lock C looked so much

" like the other two it was not kept separate from " the others, and was sold along with the rest of " the others. I meant to say that it looked much " like the Lieb Lock B.

" All after the words ' who sold it,' objected to " as not responsive.

" 26 x-Q. Who bought it ?

" A. I don't know who bought it.

" 27 x-Q. Was it sold in Newark or New York ?

" A. All our goods are sold in New York, and " especially goods which are ordered by mail.

" 28 x-Q. Was it ordered by mail ?

" A. I do not know.

" 29 x-Q. That thing which you say was like " Exhibit Lieb Lock C was attached to a bag, was " it not ?

" A. It was.

" 30 x-Q. Was Exhibit Lieb Lock C, or any of " its parts, ever attached to a bag ?

" A. It was attached to a frame and taken off again.

" 31 x-Q. When was it taken off ?

" A. Shortly after it was attached.

" 32x-Q. The other thing which you say was like " Exhibit Lieb Lock C was attached to a bag, as " as you testified ; what kind of a bag was that ?"

" A. It was a leather bag, but I do not remember the exact style of it.

" 33 x-Q. Did you see it on the bag ?

" A. I put it on a frame, and then I had the bag " attached to the frame by some of the bag " makers."

" 34 x-Q. (33 x-Q. repeated.)

" A. I did see it on the bag.

" 35 x-Q. What was the color of that bag ?

" A. I don't recollect the color.

" 36 x-Q. Can you give us the size of that bag ?

" A. I cannot.

" 37 x-Q. You say you saw it on the bag. How " came you to see it there, and where was it " when you saw it on the bag ?

" A. I came to see it because I examined some " of the bags after they are finished, and I saw it " in the shop before it was put in stock.

R., pp. 183, 184 :

" 207 Re-x-Q. What makes you swear that that " lock was sold ; what knowledge have you ?

" A. My knowledge I derive from knowing that " the bag was put in stock with other bags, and at " that time our orders were so many for bags with " locks of the several devices of Exhibit Lieb Lock " A and B, that we could not keep a stock of them " but for a short time, and the bag which contains " the device like Exhibit Lieb Lock C was put " with the other bags. I came to the conclusion " that it was sold with them.

* * * * * *

" 210 Re-x-Q. You know of your own personal " knowledge, do you not, that that bag which you " say had a lock like Exhibit Lieb Lock C is not " now in the possession of J. Lagowitz & Co. ?

" A. As far as my knowledge is, it is not.

" 211 Re-x-Q. Do you swear that it is not ?

" A. I do, because—

" Counsel for complainant objects to any explan- " ation of the answer ' I do,' and calls the atten- " tion of the Court to the reckless swearing of this " witness in view of his previous answers in which " he stated that he had no personal knowledge of " the selling of this bag, and asks the Court to " measure the testimony of this witness by this " last answer.

" Counsel for defendants calls the attention of " the Court to the fact that witness was inter- " rupted by complainant's counsel in the giving of

" his last answer, and that upon such interrupted
" answer complainant's counsel unjustifiably im-
" putes to the witness 'reckless swearing,' and
" furthermore calls the attention of the Court to
" the fact that complainant's counsel has, on pre-
" vious occasions, without apparent cause, at-
" tempted to impute improper motives to this wit-
" ness, and counsel for defendants informs the wit-
" ness that he has a right to give any explanation
" he may see fit to explain his position before the
" Court, and now requests the witness to complete
" his interrupted answer.

" Witness continues his answer: Because I am
" positive that it has been sent off with goods sent
" from our factory."

" 212 Re-x-Q. Sent from your factory where, to
" the store or to customers?

" A. To customers.

" 213 Re-x-Q. To how many customers was it
" sent?

" A. What is meant by was it; is it meant in
" combination with the other bags?

" 214 Re-x-Q. Any way you like; what I want
" to know is, to how many customers was the bag
" sent which you have sworn was sold, and which
" you have also sworn contained a lock like Exhibit
" Lieb Lock C?

" A. It could have been sent only to one
" customer, as there was only one bag of it which
" contained a lock like Exhibit Lieb Lock C.

" 215 Re-x-Q. And it is not now in Lagoowitz's
" store, is it?

" A. It cannot be there, as I said it was sent
" from the factory to a customer.

" 216 Re-x-Q. You swear, of your own knowl-
" edge, do you not, that it was sent from the fac-
" tory to a customer?

" A. I derive my conclusion that it was sent to a

" customer from the fact that from the time it was
" made and put in stock, the said stock was sold
" and cleaned out during the time of two months
" after—of about two months after.

" 217 Re-x-Q. Who cleaned out that stock?

" A. It was cleaned out by the person who had
" charge of sending the goods away to customers,
" *and I generally went around in the stock room to*
" *see what accumulation there would be.*

The Defendants Exhibits Lieb Locks A and B referred to by the witness are both in evidence and, as witness Lieb states, devices like said Lieb Locks A and B were made this last week of March, 1877, and sold about from July 1st, 1877, and subsequent.

R., p. 164 AA.

Complainant also seeks to throw doubt upon the correctness of Lieb's testimony by trying to show that some parts of Lieb Lock C look new, and to argue therefrom that such parts were recently made. But Lieb gives a satisfactory explanation of the appearance of Lieb Lock C.

R., p. 167:

" 41 x-Q. As you compare the appearance in-
" ternally of Exhibit Lieb Lock C with that of
" Exhibit Lieb Lock B are you prepared to swear
" that those parts of Exhibit Lieb Lock C were
" made in 1877?

" A. I am; and I will also tell the reason why
" the Exhibit Lieb Lock C does not look as old
" and corroded like Exhibit Lieb Lock B. Be-
" cause Exhibit Lieb Lock C was kept in a bag
" along with another lot of articles I made from
" time to time.

* * * * *

" 43 x-Q. If Exhibit Lieb Lock C had really been

" made, as you try to make us believe, in 1877,
" how is it that all those edges of that Exhibit,
" which are not found in Exhibit Lieb Lock B
" look fresh, while all those edges which it has in
" common with Exhibit Lieb Lock B look as old
" as they do in the other exhibit?

" Objected to as assumptive.

" A. I say that all the edges formed by the
" characteristic of the Lieb Lock C do not look
" new."

R., p. 182:

" 205 Re-d. Q. How is it that said parts in Ex-
" hibit Lieb Lock C appear to be bright or uncor-
" roded, if at all?

" Objected to as already answered to x-Q. 41,
" and as incompetent, of seeking a contradiction
" to that answer.

" A. The bolt fastened into the lock frame is
" made of a superior kind of sheet iron, which is
" not subjected so much to corrosion as the other
" part of the lock, or the lock case, and the Ex-
" hibit Lieb Lock C was kept as I found it in a
" bag, stored away in a closet, which closet stands
" on the first floor of our factory, where the bag
" was not so much exposed to the damp air, which
" causes corrosion in general."

The Lieb Lock C and the device or lock set forth in complainant's patent in suit (two such devices or locks, being in evidence as Defendant's Exhibit Roemer Lock Case, and Exhibit D 2), in addition to other similarities, present the similarity that they both are inconvenient if not impractical structures.

The defendants' witnesses Koch, Heller and Jenkinson all used devices like Defendants' Exhibit Roemer Lock Case, and all of said witnesses testify that they abandoned the said structures because of their incon-

venience and their liability to have parts lost, a lock made in one piece or with the pieces all connected so that they are not liable to come apart being preferable to devices like Defendants' Exhibit Roemer Lock Case.

R., pp. 96, 87. AA. of Koch, 1, 2, 3, 4, 5, 6, 18, 22, 23, pp. 100, 101. AA. of Heller, 1 to 5. The Exhibit D^2 referred to in Heller's testimony is a structure the same as Defendants' Exhibit Roemer Lock as Jenkinson states, R, p. 68, A. 4, pp. 129, 130. AA. of Jenkinson 4 to 10.

So Lieb, when he is asked why he did not make more than two devices like the Defendants' Exhibit Lieb Lock C, states the reason because he did not find them as good and practical as the other two devices, Lieb Locks A and B.

R. p. 165, A. 12:

Lieb made the structure Lieb Lock C and the structure like it which was sold, for the purpose of curing defects in structures like Lieb Lock B, but the manufacture of articles like Lieb Lock C was dropped after two of them had been made as above stated.

R., p. 165:

" 18 Q. How did you come to make the device
" Complainant's Exhibit Lock C, and the other one
" like it, which you made, as you testified?
" Objected to as immaterial.
" I was led to it by the occasional breaking of the
" ends of the lock in fastening the ring which goes
" around the handle cap into the slot contained in
" the ends, by bending the points down over the
" ridges formed near the slot, which had to be
" crowded in and turned over by the hammer.

R., p. 190:

" 280 Re-x-Q. Was Exhibit Lieb Lock C made

" to cure some defects you had found in Exhibit " Lieb Lock A or B?

" A. It was.

" 281 Re-x-Q. How did you find those defects " in Exhibit Lieb Lock A, or B, which Exhibit " Lieb Lock C was to cure?

" A. The defects of Lieb Lock B were that the " end pieces where the handle fastening is at- " tached frequently broke in striking the ends of " the ring around the handle cap into it, and my " idea was that after I had brought the lock C to " its construction I would substitute either an end " of malleable iron or of stamped metal which I " abandoned after having decided not to make the " lock Exhibit Lieb Lock C, in larger quantities, " or any at all, and if I would have made them of " stamped metal I could have secured them the " handle ring more secure to it.

" 282 Re-x-Q. How about the defects in Lieb " Lock A, which Lieb Lock C was to cure?

" A. There was no defects to be cured on " Lieb Lock A, because that construction is of " a different nature in fastening the handles to " the lock.

Lieb is also cross-questioned why he did not produce the Lieb Lock C on his first appearance in this controversy, and his explanation is very satisfactory, showing him to be a very conscientious witness.

R., p. 168:

" 47 x-Q. At the time you made your first affi- " davit in this cause did you remember having " made such a thing as Defendants' Exhibit Lieb " Lock C?

" A. I did remember, but I did not know or " recollect that Exhibit C was in existence yet.

" 48 x-Q. But you knew well enough that you " had made it?

" A. I did.

" 49 x-Q. Did you tell any one that you had " made it?

" A. I did not.

" 50 x-Q. Why not?

" A. Because I thought it of no use.

" 51 x-Q. Why did you think it of no use?

" A. Because I knew that in certifying or " giving testimony of having made an article it " would be of no effect unless you can produce or " show that article.

" 52 x-Q. How did you acquire that knowledge?

" Objected to as immaterial.

" A. Because I had a little experience in patent " litigation.

" 53 x-Q. Please state that experience.

" A. I was interested in the interference case " between Sonnekalb and Lieb against J. H. " Sessions, and also Roulston."

The complainant tries to discredit the evidence of Lieb by three witnesses called by complainant, namely, Hanko, Heilman and Leimberger.

The witness Hanko distinctly admits that Lieb could have made locks like Lieb Lock C and had them put on a bag without the knowledge of said Hanko, and said Hanko will merely swear that he never saw a lock like Lieb Lock C.

R., p. 36, AA. 6, 7, 8.

Hanko admits that Lieb experimented in regard to locks.

R., p. 37, A. 13.

Moreover, this Hanko, as appears from his AA. 17, 18, 19 (C. R., pp. 35, 36) is a dishonest character, and

not disposed to say anything in Lieb's favor, if he can avoid it.

But in spite of his unfriendly disposition to Lieb said Hanko admits that an employee of Lieb's firm, by name of Heilman, stated to said Hanko that said Heilman may have done some work regarding Lieb Lock C, but that said Heilman cannot recollect whether he did or did not do such work.

R., pp. 39, 36, AA. 24, 25, 3, 4, 5.

The complainant's witness, Heilman, will not swear that Lieb never made a device like Lieb Lock C, and said Heilman admits that Lieb was in the habit of experimenting in regard to locks.

R., p. 40, AA. 8, 9, 11.

The desperate struggle of complainant's counsel to lead the complainant's witness, Leimberger, to weaken the force of Lieb's testimony, and his failure to obtain any evidence of value to complainant, are worthy of note.

R., p. 41:

"4 Q. If, while you were foreman of the bag "department of Lagowitz & Co., a lock of that "construction (like Lieb Lock C), had been "attached to a bag frame, would you or not have "known of it?

"A. Well, I couldn't answer as positive; there "is reasons for that; the reason is this; if such a "thing as that is made new, it is generally done in "the frame-shop first, as an experiment; if it "works all right, then they brought it up to me.

"5 Q. If such a lock had been put on a frame, "and the bag was then attached to the frame by "one of the bag-makers in that shop, as stated by "Mr. Lieb in answer to Q. 33, which I will read

" you, would it or not have passed through your " hands or under your observation ?

" A. That is another question that can't very " well be answered direct, for the reason that *Mr.* " *Lieb would very often do things or have things* " *done, without the knowledge of the foreman; he* " *was a kind of privileged character.*"

Again Leimberger admits (C. R., p. 42, A. 9) that the general appearance of a structure like Lieb Lock C when its parts are put together is very much like that of Exhibit Lieb Lock B, and Lieb states the same thing.

R., 116 :

" 25 x-Q. I wish to know the name of the per- " son who sold it ?" (The other lock like Lieb Lock C.)

" A. I cannot tell the name of the person who " sold it, because orders were coming in from dif- " ferent parties to whom samples were sent like " Lieb Lock A and B, and Lieb Lock C looked so " much like the other two it was not kept separate " from the others, and was sold along with the " rest of the others. I meant to say that it looked " much like the Lieb Lock B."

This similarity in the structures may have caused some of the witnesses to forget or overlook a structure like Lieb Lock C, but from the evidence introduced there can be no reasonable doubt that a device like Lieb Lock C was sold in 1877, and that the Exhibit Lieb Lock C was made in September, 1877.

Jenkinson Lock.

Articles like Defendants' Exhibit Jenkinson Lock appeared in the market about October, 1877, and were put on bags and sold.

R., p. 130:

"11 Q. Will you please look at the device I now "hand you, and tell us what it is?

"A. It is a bag lock made by the Manhattan "Brass Company, and sold to us in February, "1878. The exact date I can give by referring to "our books.

"Defendants' counsel offers said lock in evi- "dence, and it is marked Defts.' Exh. Jenkinson "Lock, May 7, 1884. J. A. S., Exr.

"12 Q. Was February, 1878, the first occasion "that you saw a device like Deft.'s Exh. Jenkin- "son lock?

"Objected to as leading.

"A. No.

"13 Q. When previously did you see a device "like that?

"A. I think about four months previous to the "delivery of these locks to our firm. It was a "sample made by hand.

"14 Q. And the delivery of these locks to your "firm was when?

"A. February, 1878; we will send a copy of the "invoice from our books.

"Defendants' counsel states that on the receipt "of such invoice he will offer it in evidence as "Deft.'s Exh. Jenkinson Invoice.

"15 Q. In February, 1878, did you receive one "device like Deft.'s Exhibit Jenkinson Lock or a "number of such devices?

"A. A number—I think thirty or forty dozen.

"16 Q. What did your firm do with them?

"A. Commenced putting them on bags and sell- "ing the bags.

R., p. 130:

"20 x-Q. Is the lock Deft.'s Exh. Jenkinson "Lock in the same condition as were those locks

" which you say were supplied to you by the Man-
" hattan Brass Co. in 1878?

" A. It is, and I believe is one of the original
" locks.

" 21 x-Q. Do you remember seeing this identical
" Exhibit Jenkinson Lock before to-day?

" A. I think this lock I gave Messrs. R. Neu-
" mann & Co.

" 22 x-Q. When?

" A. Some weeks ago.

" 23 x-Q. And I understand you that this lock
" is in the same condition as it was in when sold to
" you by the Manhattan Brass Co. Am I right?

" Objected to as already answered.

" A. I think it is.

R., p. 131:

" 25 x-Q. Was the Manhattan Brass Co. the
" only concern that made locks like Jenkinson lock
" for you?

" A. The Manhattan Brass Co. was the only
" company who made them for us; J. Lagowitz &
" Co. had a similar lock in use several months be-
" fore we ordered of the Manhattan Brass Co.

" All that portion of the answer after the first
" sentence objected to by complainant's counsel as
" not responsive.

R., p. 132:

" 29 x-Q. How do you fix the time when you
" first received locks like Exhibit Jenkinson Lock?

" A. By our invoice.

R., p. 136:

" 84 x-Q. Where is that hand-made sample to
" which you refer in answer to 13 Q.?

" A. We put it on a bag when we received it
" and sold the bag; I don't know when; it lay at
" our place some months before it was sold.

" 85 x-Q. Who showed it to you?

" A. J. H. White, President of the Manhattan " Brass Co.?

" 86 x-Q. Where did he show it to you?

" A. I am not sure whether at our office or at " his office, but I think it was at his office, at the " Manhattan Brass Co., 26th or or 28th street and " 1st avenue; I think it is 28th street, New York " City.

" 87 x-Q. And when he showed it to you in " New York you kept it, and took it over to New- " ark, did you?

" A. We kept it; whether it was from our office " or theirs I cannot tell you, but put it on a bag " in our place.

" 88 x-Q. How many locks like Exhibit Jenkin- " son Lock have you bought altogether?

" A. I am sure it is in the hundreds of dozens.

R., pp. 151, 152:

" 1 Q. Have you before testified in this case?

" A. I have.

" 2 Q. Will you please look at the paper I now " hand you and tell us what it is and what it re- " lates to?

" A. It is a bill of the Manhattan Brass Co. " under date of February 21st, 1878, for 12 dozen " extra railroad locks similar to Defendants' Ex- " hibit Jenkinson Lock.

" Defendants' counsel offers in evidence the bill " referred to by witness, and the same is marked " Defendants' Exhibit Jenkinson Bill, May 14th, " 1884. J. A. S., Exr.

" 3 Q. And you received locks like Defendants' " Exhibit Jenkinson Lock from the Manhattan " Brass Co. when?

" A. On the date of the bill presented (Defend- " ants' Exhibit Jenkinson Bill).

"4 Q. Who are Messrs. T. B. Peddie & Co. "mentioned on Defendants' Exhibit Jenkinson "Bill; is that your firm?

"A. At that date the firm consisted of T. B. "Peddie, George B. Jenkinson and Robert Dod.

"5 Q. The George B. Jenkinson mentioned in "your last answer is yourself, is it?

"A. It is.

"6 x-Q. Where did you get this paper, Defend- "ant's Exhibit Jenkinson Bill, from?

"A. From a box dated 1878, in which T. B. "Peddie & Co. keep their invoices and bills.

"7 x-Q. Can you tell me what the letters R. W. "C., which appear in pencil on that bill, mean?

"A. They are the initials of R. W. Chapman, a "foreman in that department, who received the "goods, and the R. W. C. are the evidence to us, "T. B. Peddie & Co., of the goods being received.

R., p. 152:

"11 x-Q. Did you see these goods to which you "say Jenkinson bill relates, when they were de- "livered?

"A. I saw them shortly after they were de- "livered; not more than one day after they were "delivered."

The date of said Jenkinson bill as appears in D. R., p. 232, is February 21st, 1878.

Kupper Structure.

In the fall or winter of 1877 there was made a structure like Exhibit D^3.

The evidence of Charles Kupper was expected by complainant to be so damaging to complainant's case that complainant's counsel, in spite of the protest of

defendants' counsel, insisted upon having this witness examined in the English language although it was made to appear to complainant's counsel that this witness Kupper is but slightly familiar with the English language, as plainly shown by the proceedings in Deft.'s record, pages 41 to 44.

The witness' want of familiarity with the English language caused such misunderstandings, as, for example, the following :

(R., pp. 145, 146) :

" 94 x-Q. Look at the paper which I now show " you (showing witness affidavit dated January " 10th, 1884, signed by Charles Kupper, and sworn " to before W. Hauff, Notary Public, and on file " in the Clerk's Office of this Court, since January " 12th, 1884), and state whether that is your " affidavit ?

" Objected to unless witness be given oppor- " tunity to read such paper.

" A. That is my name in my hand (pointing to " the signature.)

" Counsel for complainant offers said affidavit in " evidence, and the same is marked Complainant's " Exhibit Kupper Affidavit, May 15th, 1884.—J. " A. S., Exr.

" 95 x-Q. Have you ever read that affidavit ?

" A. No, sir.

" 96 x-Q. Did any one read it to you ?

" A. What do you mean, my name ?

" Counsel for defendant objects to cross-ques- " tions and answers 95 and 96, as it is plain that " the witness has not understood said questions.

" 97 x-Q. Why did you sign your name to that " affidavit ?

" A. He read it to me before what it was, I " think so—I don't know. When I put my name " down he read to me what it was.

"98 x-Q. Who read it to you?

"A. I don't know where it comes from. I don't "understand."

Defendants' counsel was thus put to great trouble in order to carry on the examination of this witness and to make his evidence intelligible.

This witness Kupper was examined in a prior suit on this patent, brought in the District of New Jersey, by this complainant against Albert O. Headley upon the same patent here sued on, the record in said Headley suit with the Exhibits D, D^1, D^2 and D^3, thereunto belonging, having been introduced in evidence in this suit by complainant on page 21, and said Headley record also having been printed and embodied into record herein.

R., pp. 64 to 84.

As this Headley record is introduced as one of *Complainant's* Exhibits, defendants have a right to use it against the complainant, and the attention of the Court is called to the following quotation from Kupper's testimony in said *Complainant's* Exhibit.

R., p. 81:

"1 Q. When did you first make a lock like this "lock, Exhibit D^3."

"A. I made it this time in 1877, before Christ- "mas; about one or two months before; Oscar "Barnett made some of the castings for me."

This evidence Kupper corroborated when examined in this case by defendants.

R., p. 114:

"11 Q. Please look at Complainant's Exhibit "D 3, in this case, and state whether you recog- "nize the construction of lock there shown you?"

"A. That is a lock that I made.

" 12 Q. When did you first make it ?

" A. I made that—I sold some in March, '78.

" 13 Q. To whom did you sell them in March,
" '78 ?

" A. To Headley & Son.

" 14 Q. How long before selling them did you
" first start making them ?

" A. Well, I made them about a couple of pieces
" or so ; but that was the first one I sold—I don't
" know when I made them. I made the first pat-
" terns myself ; I made them before.

" 15 Q. Please tell us as near as you can when
" you made the first patterns ?

" A. Well, as near as I can remember, it was
" when I made the first things—it was before New
" Year that I made the first one of them. I don't
" know exactly the time.

" 16 Q. Did you make and sell any more locks
" like Exhibit D 3, in addition to the lot that you
" sold in March, 1878 ?

" A. Oh, yes ; I sold more after that.

" 17 Q. When you say it was before New Year
" that you made the first one of them, please state
" the number of the year that you mean ?

" A. Well, that's in '78 that I sold them—that
" must be '77 that I made them.

R., p. 146 :

" 108 x-Q. Did you make locks like Exhibit D 3
" in 1878 ?

" A. Yes, sir ; I made them 1878.

" 109 x-Q. Did you in 1879 ?

" A. I believe I made some in 1879, too.

" 110 x-Q. Did you in 1877 ?

" A. I made about one or two pieces, I be-
" lieve."

Kupper is corroborated by Jost, a witness for de-

fendants, who, as Kupper states [R., p. 144, A. 75 (2)] made the castings for Exhibit D 3.

At first Jost confuses the lock D 3 with the lock D 1, stating that he made D 1 in the fall of 1877, but being recalled, Jost admits his error and states that structures like Exhibit D 3 were made in the fall of 1877, thus corroborating Kupper's testimony.

R., p. 105:

"3 Q. Have you ever done any work for said "Kupper regarding lock plates?

"A. Yes, sir.

"4 Q. What did it relate to; please specify as "definitely as you can?

"A. I made the lock plates the same as this "(witness takes in his hand the plate of 'Exhibit "D 1 for Headly' and says): The pattern brought "to me was from an iron casting, but it was mal- "leable iron casting.

"5 Q. When was it that you made the lock "plates the same as in said Exhibit D 1 for Mr. "Kupper?

"A. It was in the fall of 1877; I can only "prove it by my books, as I have made another "lock-plate pattern in September, 1878, and some "castings from this pattern; I have made the "first lock-plate castings of Exhibit D 1 about "one year before; I have made the other pattern "for the other lock-plate castings.

"6 Q. What was the appearance of the other "lock plates, the pattern of which you made about "one year after making the lock-plate castings of "Exhibit D 1?

"A. The appearance was like this here (witness "takes in his hand the lock plate of Exhibit D 3), "and I have got the pattern of those castings "in my factory yet.

R., pp. 106–107 :

" 13 Q. How are you able to fix the date of the " fall of 1877 as the date when you made the lock " plates the same as in Exhibit D 1 ; please in- " form us how you get at that date ?

" A. I cannot fix the date at all, but I remem- " ber that I casted the plates in the same season " the year previous.

" 14 Q. The year previous to what ?

" A. To September 17, 1878.

" Counsel for defendant requests the officer to " certify that the quotation in the witness' 9th an- " swer ' September 17, 1878, 3 gates of patterns, " $14.00,' is a correct quotation from the book."

" The officer so certifies.

" 17 x-Q. You are positive, are you, that you " made lock plates like Exhibit D 1 for Mr. Kup- " per in the fall of 1877, are you not ?

" A. Am not certain that it was in 1877, but " know it was not less than nine months or more " that I made those lock plates like Exhibit D 1 " the year before, and I made them from malleable " iron castings.

" 18 x-Q. Are you sure that you made them " in 1877 ; might it not have been the spring of " 1878 ?

" A. I am only certain that I made them in the " same season the year previous, as the castings " he is charged for in my book are for the later " lock-plate castings of September 17, 1878 ; I would " also state that these charges for castings con- " sisted of lock-plate castings, rings and front " hasps for the same lock plates."

R., p. 107 :

" 27 x-Q. Are you positive that patterns like " Exhibit D 1 were brought to you nine months " before September 17, 1878 ?

" I am positive that those patterns have been " brought to me in the same season that I have " made the later ones, as I have said already, and " I can remember whether I have made the same " goods four weeks ago, or one year."

R., pp. 110, 111:

" 54 Re-d. Q. In answer 27 you state that those " patterns have been brought to you in the same " season that you made the later ones. Please " specify a little more definitely what you mean by " the same season?

" Objected to on the ground that the witness " was given an opportunity before the cross- " examination was closed of correcting or altering " this answer, if he so desired, and he failed so to " do, and expressed no desire to change the same.

" Counsel for defendant replies that he requests " the witness neither to correct nor to alter his " answer, but simply to make his meaning a little " more clear.

" A. If I have answered that question I neglected " to say in the same season of the previous year; " I mean to say that it was about the same season " of the previous year; I understand the season " being from three to four months.

R., pp. 119, 120:

" 2 Q. When you last testified you stated in " answer 5 that you made lock plates the same as " in Exhibit D1 for Mr. Kupper in the fall of 1877; " please state what you have to say about that?

" Objected to, as the witness has been already " fully examined on this subject and his testimony " closed.

" A. I said that I made lock plates the same as " those in Exhibit D1 about a year before I charged " patterns for a lock plate pattern, a catch pattern

" and a ring pattern; and after looking the pat-
" terns over I have found that this Exhibit D1
" was not the plate I made a year before.

" 3 Q. Which plate was it then, if any?

" A. It was the plate Mr. Kupper had made by
" me the first time he made long lock plates.

" By request of defendant's counsel it is here
" noted that complainant here appears in person.

" 4 Q. What did that look like?

" A. It was a solid plate, similar to this plate,
" Exhibit D3.

" 5 Q. Have you got any solid plate here to
" show what the first long lock plate was like; if
" so, please produce it before the officer?

" A. This is the plate; it was the first one.

" The plate produced is offered in evidence and
" marked Defendant's Exhibit Jost First Plate,
" May 5, 1884. J. A. S., Exr.

" The offer of the exhibit is objected to as imma-
" terial.

" 6 Q. When did you first make lock plates like
" the one in Defendants' Exhibit Jost First Plate?

" A. I mixed up the different plates and gave
" the time of the plate in Exhibit D1 instead of
" the time of the plate in Defendant's Exhibit Jost
" First Plate.

" 7 Q. And the time when you first made lock
" plates like the one in Defendants' Exhibit Jost
" First Plate was when; please state as near as
" you can?

" A. It was from nine months to a year before I
" charged three gates of patterns in my book of
" 1878—September 17 I think it was."

The pages bearing the entry which shows the date of September 17th, 1878, are introduced in evidence as Defendants' Exhibit Jost Account and appear on page 226 of the record.

Fourth Point.

In view of the above prior patents and statements there was and could have been no invention in making the device described in the patent.

The appellant's own expert, after the testimony had been put in, admitted (p. 29, fol 89):

"I am of opinion, however, that in view of the state "of the art, the device described and claimed in the "Roemer patent 208,541, must be limited to end "pieces provided with notches or recesses to hold "handle-rings or catches to close the jaws of the bag, "or other suitable purpose, as stated in the patent."

In other words, the patentee's own expert found that the prior art clearly showed locks for bags having a body, *A*, substantially as described in Roemer's patent, said body having open ends and those open ends being closed by end pieces, and that the only difference between what he admitted had existed before and the device of Roemers was that the Roemer end pieces had notches in them to hold handle-rings or other devices, whereas the structures which he admitted had previously existed did not.

This admission was compelled from him, doubtless, by the fact of the prior existence of the Bernheim patent and the manufacture of the Bernheim locks.

He must be taken as having assumed that the prior existence of the structures of Lieb, Kupper and Jenkinson was not sufficiently proved.

We have already shown, however, that the prior existence of these structures was adequately proved.

But, even if we should treat the Bernheim structure as the only one in the case, yet, that in itself, taken in connection with the admitted use of notches for holding handle-rings in other forms of bag-locks, would be quite sufficient.

We have already shown that the complainant's patent is not limited to a structure having the handle-ring notches in the end-pieces, and such was the ruling and decision of Judge WALLACE.

But even if it were, or even if the appellant should urge that he was entitled to sustrain his patent for so much of the alleged invention therein described as consisted of a lock made up of a body, *A*, having open ends which were filled with end-pieces and provided with notches for handle-rings, yet this would not be a patentable invention for the following reasons:

First. Because the making of notches for handle-rings or catches had been long known in a great variety of lock-cases (see Exhibit Simon patent of 1876, p. 246; Roemer patent of May 15th, 1877, p. 248; and Exhibit Roemer patent of September 18th, 1877, p. 251).

That they were well-known structures in the markets is also abundantly proved, and they are illustrated in the Exhibit Fisher's Design (p. 206).

Under such circumstances there cannot possibly be any invention in providing a known form of bag-lock having end pieces (such as Bernheim's) with handle-ring notches, when the form of lock without such notches was old, and when such notches had been used on a great variety of other styles of locks.

Second. Because there is no patentable combination between the notches in the end-pieces and the other features of the lock.

If the notches are present in the end-pieces they perform no new function in the combination.

The other parts of the structure operate precisely the same whether such notches are present or absent.

The case is, therefore, one of mere aggregation and not of patentable combination.

"In order to render a combination patentable the

" results must be a product of the combination, and not " a mere aggregate of several results, each the complete " product of one of the combined elements. Merely " bringing old devices into juxtaposition, and then " allowing each to work out its own effect without the " production of something novel, is not invention."

Reckendorfer vs. Faber, 92 U. S., 354.
Hailes vs. Van Wormer, 20 Wall., 353.
Rubber Co. vs. Welling, 97 U. S., 7.
Double Pointed Tack Co. vs. Manfg. Co., 109 U. S., 120.
Slawson vs. Railroad Co., 107 U. S., p. 654.

In *Pickering vs. McCollough, 104 U. S., 310,* this Court said :

" In the patentable combinations of old elements all " the constituents must so enter into it as that each " qualifies the other." * * * " It must form either " a new machine of a distinct character and function or " produce a result due to the joint co-operating action " of all the elements.

" It is not a mere adding together of separate con- " tributions."

Fifth Point.

The Alleged Infringement.

Appellant in the Court below sought to have the Court declare that the devices, " Complainant's Exhibit Neu- " mann Lock," the " Complainant's Exhibit Infringing " Lock," the " Complainant's Exhibit Neumann " Satchel," and " Defendants' Exhibit Neumann Lock " No. 2," are infringements of complainant's patent in suit.

The Exhibits Neumann Lock and Infringing Lock resemble one another in construction and operation.

On this appeal we understand that *only* the first two named exhibits (*which are alike*) are contended to be infringements.

The defendants' expert, Faber du Faur, after an exhaustive review of the prior state of the art (R., pp. 207 to 211) shows that there is no infringment.

Complainant's Exhibits Infringing Lock and Neumann Lock.

An inspection of Complainant's Exhibits Infringing Lock and Neumann Lock will show that they are described and claimed in the patent of Robert Flocke, dated February 21, 1881 (Rec., p. 236) (*which is owned by defendants*) and, so far as any features involved in *this* controversy are concerned, are in substance the structure of the Defendant's Exhibit Simon patent of 1876 (Rec., p. 246), that is to say, they are locks having lock cases *not* with *open* bottoms and mere separate end pieces (as shown in complainant's patent), but mounted upon bottom plates, said bottom plates being extended so as to admit of the formation or application of creases or loops suitable for the attachment of handle rings or catches which close the jaws of the bag, and as substantially appears from the unwilling admission of complainant's expert, Mr. Drake (R., p. 55, A. 30), the ends of the lock cases of said "Neumann "Lock" and "Infringing Lock" are not open as set forth in appellant's patent in suit.

Mr. Faber du Faur says as follows (R., p. 212):

> "In Complainant's Exhibit Neumann Lock and
> "Complainant's Exhibit Infringing Lock, the lock
> "is complete without the handle attachments,
> "while in complainant's device the lock is not com-
> "plete without the separate end pieces, between
> "which the lock mechanism is contained.

" Defendants' lock, Complainant's Exhibit Neu-
" mann Lock and Complainant's Exhibit Infringing
" Lock is in fact a modification of the lock shown
" and described in the Simon patent of 1876, of
" the locks Defendants' Exhibit Jost First Plate,
" and Jost Second Plate ; Defendants' Exhibit D3,
" Defendants' Exhibit Jenkinson Lock, and De-
" fendants' Exhibits Lieb Locks A and B, the dif-
" ference being essentially only in form and de-
" sign, while retaining the constructive feature of
" a lock case secured upon an extended bottom
" plate, with means for attaching rings or handles,
" an arrangement well known prior to the date of
" complainant's patent ; the object of which patent
" is to dispense with an extended bottom plate, and
" to make the central part simply U-shaped, con-
" fining the lock mechanism between separate end
" pieces.

" Defendants' Locks Complainant's Exhibit
" Neumann Lock, and Complainant's Ex-
" hibit Infringing Lock, are locks like the
" lock shown and described in Defendant's
" Exhibit Flock, 1881 Patent, in which patent it
" is stated that the lock case is provided with
" downwardly projecting fingers or pieces *e'*, which
" may close, or partially close the ends of the lock
" case and which may leave the opening *e*, into
" which the corner pieces *b* fit when in place on the
" bed plate. It is also stated that the lock case holds
" the ordinary locking mechanism and key bolt
" and one of the end pieces *e* forms the support of
" the lock spring. The specification of the Flocke
" patent of 1881 clearly establishes the fact that
" Defendants' Locks Complainant's Exhibit Neu-
" mann Lock, and Complainant's Exhibit Infring-
" ing Lock, which are made as shown and de-
" scribed in said patent, do not, as in complain-
" ant's device, have the central part formed with

" open ends and separate end pieces provided for
" closing up such open ends, and for confin-
" ing the lock mechanism.

" Complainant's Exhibits Neumann Lock and In-
" fringing Lock do not contain the invention re-
" ferred to in the second claim of complainant's
" patent, because they do not have end pieces or
" plugs inserted longitudinally into an open cen-
" tral body, and do not have U-shaped shoulders,
" such as refered to in the second claim of com-
" plainant's patent, and limiting the degree of in-
" sertion of the plugs in the longitudinal direction.
" On the contrary, in defendant's locks the po-
" sition of the lock case upon the bed plate is fully
" defined by prongs passing through holes in the
" bed plate."

Complainant's Exhibit Neumann's Satchel.

This lock in substance is the structure of U. S. Letters Patent No. 279,733 (June 19th, 1883).

This patent was introduced by complainant's counsel (R., p. 162), and the constructions set forth in said patent are illustrated by said Complainant's Exhibit Neumann Satchel, and by Defendant's Exhibit Neumann Satchel, and by Defendant's Exhibit Neumann Lock No. 2, which last-named device is now also brought into this controversy.

An inspection of these locks in Exhibits Neumann Satchel and Neuman Lock No. 2 shows that the handle clips or handle holders are attached to the top of the structure the same as in Defendant's Exhibit Simon 1876 Patent, the handle rings or loops are shown as being capable of attachment to the top of the lock plate.

Also in Defendant's Exhibit Read Patent of 1872, the handle rings shown as being attached to the top of

a lock case as is the case in said Exhibits Neumann Satchel and Neumann Lock No. 2.

The same is true of the Exhibits Jenkinson Lock and Lieb Locks A and B.

Said Exhibits Neumann Satchel and Neumann Lock No. 2, as also the devices of said Simon 1876 Patent and Read 1872 Patent Lieb Locks A and B, are complete Locks without the attachment of the handle holders while in complainant's structure of the patent here sued on the lock is inoperative without at least one of the end pieces.

R., p. 25, A. 6 of Drake :

With regard to Complainant's Exhibit Neumann Satchel and Defendants' Exhibit Neumann Lock No. 2, and their alleged similarity to complainant's patent in suit, see also R., p. 212, 213 (Test. of Faber du Faur) :

"The Locks, Defendants' Exhibit Neumann Lock "No. 2, and Complainant's Exhibit Neumann Satchel "do not contain the invention shown and described in "complainant's patent, and referred to in the claims of "the same, because said locks are complete in them- "selves without the addition of the handle fastenings, "and have no open ends for the insertion of plugs be- "tween which the lock mechanism is confined as in "complainant's patent. The handle rings in Defend- "ants' Exhibit Neumann Lock 2 and Complainant's "Exhibit Neumann Satchel, are not held between sep- "arate end pieces and the bag frame, as in complain- "ant's patent; they are attached to the top of the "lock case by clips passing through holes in the top "of the extended lock case; said clips perform no "other function than to attach the handle rings to the "top of the lock case, and the holes or slits into which "the clips are inserted have no other object but the "insertion of such clips, so that the omission of the "slits and clips leaves the lock complete without

" handle fastenings; handle fastenings attached to the " top of a lock case, or to the top of an extended lock " case, have been known long prior to the date of the " complainant's patent, as illustrated by Defendants' " Exhibit Read Patent and Defendants' Exhibit Lieb " Lock A and B."

None, therefore, of the forms of defendants' locks infringe.

Sixth Point.

Appellant's Alleged Date of Invention.

Complainant applied for the patent here in suit on March 26th, 1878, and in his testimony complainant claims that he invented the device of said patent in suit in the early part of 1876 (C. R., p. 106, A. 1), but that he did not make the first model until January, 1878.

Nor did said complainant apply for the patent here sued on until said complainant had, on May 15, 1877, and September 18, 1877, obtained the patents for locks Nos. 190,907 and 195,233. The testimony of complainant as to such an early date for his alleged invention is improbable and incredible. The present patent on its face recites that the invention contained in it is a mere improvement on that patented in 1877. If it had existed at all at the date of the 1877 patent it would have been referred to and included in it.

But whether the testimony of Roemer is credible or not, his alleged invention was on his own statement a mere mental conception until 1878. It had not been reduced to practical form, and did not take rank as an invention until 1878.

Webb vs. Quintard, 9 Bl., 352.
White vs. Allen, 2 Cliff., 224.
Sickles vs. Borden, 3 Blatch., 535.

While the complainant alleges that he was delaying for about two years or more to put his invention into practice and to apply for his patent here in suit, the devices Lieb Locks A, B and C, the Jenkinson lock and the devices of Kupper D^1 and D^3 came into the market, and the Simon 1876 patent was issued.

As between the complainant and the inventors whose structures are shown in the Read 1872 patent and the Bernheim 1875 Lock, or the Lock of Bernheim Certified Model, and the Schloss 1856 Patent said complainant is anticipated by said inventors, whose structures had been known prior to the date of 1876, given by complainant as being the time when he conceived his invention.

Seventh Point.

In all points of the case the right is with the appellees, and the appeal should be dismissed with costs.

Respectfully submitted,

FREDERIC H. BETTS.

August 29, 1888.